* Together with Haskins Brothers & Company v. O'Malley
Collector of Internal Revenue

No. 687

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 659

THE CINCINNATI SOAP COMPANY, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 16, 1937.

CERTIORARI GRANTED FEBRUARY 15, 1937.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 18, 1937.

—8734-C

District Court of the United States

For the Southern District of Ohio, Western Division

No. 5049.

The Cincinnati Soap Company, a corporation under the laws of Ohio,

Plaintiff,

vs.

The United States of America,

Defendant.

PETITION

(Filed July 6, 1936.)

To the United States District Court for the Southern District of Ohio, Western Division:

The petition of The Cincinnati Soap Company respectfully shows:

I.

That the petitioner, The Cincinnati Soap Company, is a corporation under the laws of the State of Ohio, with its principal office and place of business at Cincinnati, Ohio, the same being in the Southern District of Ohio, Western Division.

II.

That this suit is brought against the United States of America under the laws of the United States, and is for the recovery of a sum of money, called a processing tax, imposed by Section 602½ of the Revenue Act of 1934 (C. 277, 48 Stat. 763), upon the processing by plaintiff of coconut oil, which sum of money is hereby alleged to have been illegally assessed and to have been illegally collected by the Collector of Internal Revenue at Cincinnati, Ohio. A copy of the relevant sub-sections (a), (b) and (f) of said Section 602½ is, for convenience, attached to the petition.

The jurisdiction of this Court is based upon paragraph 20 of Section 24 of the Judicial Code as amended February 24, 1925 (43 Stat. 972, C. 309, 28 U. S. C. A. Sec. 41 [20]) whereby concurrent jurisdiction with the United States Court of Claims is conferred upon District Courts of the United States for the recovery of internal revenue taxes.

Petition.

III.

That the claim of the petitioner is for a refund of the sum of Nine Hundred and Ninety-five and 85/100 ($995.85) Dollars collected from it by the Collector of Internal Revenue at Cincinnati, Ohio. As required by said Section 602½ of the Revenue Act of 1934, petitioner did on the 28th day of February, 1935 make a return, on the form prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, stating that in the month of January, 1935, it had used in the manufacture of soap intended for sale 33,195 pounds of coconut oil, which coconut oil was wholly the production of the Philippine Islands; and together with said return petitioner did pay said sum of $995.85 to the said Collector of Internal Revenue, which sum was three (3) cents per pound upon said Philippine coconut oil as prescribed by said section of said Revenue Act of 1934. For abbreviation the expression "Philippine coconut oil" as used in this petition, will signify coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production.

On January 7, 1936 petitioner filed with the Bureau of Internal Revenue its claim for the refund of said $995.85 (a copy of which claim is attached to this petition), which claim was rejected by the Commissioner of Internal Revenue on the 14th day of May, 1936, the following beig the Commissioner's stated grounds for such rejection:

> "Reference is made to your claim for the refund of $995.85, representing tax paid under the provisions of Section 602½ of the Revenue Act of 1934 on the first domestic processing of coconut oil during the month of January 1936.
>
> "You contend that the amount was erroneously paid for the reason that the tax imposed under section 602½ of the Revenue Act of 1934 does not fall within the taxing power of Congress and is therefore unconstitutional.
>
> "You are advised that it is the province of this office to administer laws as enacted by Congress and it is without authority to pass upon the constitutionality of such laws. Inasmuch as you have set forth no other contention in support of your claim for refund on which consideration can be given, it is the opinion of the Bureau that the tax was correctly paid.
>
> "Your claim is therefore rejected in full."

Petition.

IV.

The petitioner is and, at the time of said payment and for many years previous thereto, was in the business of manufacturing toilet and other soaps, with its manufacturing plant located exclusively at Dayton, Ohio, and its manufacture of soap, including the use of Philippine coconut oil in such manufacture, took place exclusively at said manufacturing plant and was and is exclusively intrastate in character and exclusively within the State of Ohio. In January 1935, as well as before and since said month, Philippine coconut oil was and has been an essential ingredient of a large proportion of the soaps made and sold by it, and in January 1935, as well as before and since, petitioner was and has been unable to make use of any substitute for such coconut oil in the manufacture of said large proportion of the soaps upon which its business was built and conducted and was and has been dependent. Coconut oil contains lauric acid, which is the element causing soap to lather freely.

V.

Philippine coconut oil, either in liquid form or in the solid form of copra, when intended for use in the United States is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded from the said ships and delivered to said dealers at said ports, and when so delivered the importation of such oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers, said dealers place the oil from time to time in railroad tank cars in which it is transported by rail from the plants or warehouses of the dealers to the plants or warehouses of the soap manufacturers or other users of the oil. These manufacturers and other users unload these tank cars delivered to them respectively and place the oil in their own storage tanks or other receptacles in their own respective plants, and thereupon the interstate transportation of the oil terminates.

All of the above facts concerning the importation and transportation of the oil apply to and were true of the oil used by the petitioner in January 1935, upon which use said $995.85 was imposed, as well as of all other Philippine coconut oil used by the petitioner in its manufacture of soap. The said oil was purchased from two dealers, one located at Edgewater, New Jersey and the

other at West Berkeley, California, and was received by the petitioner in tank railroad cars into which it had been placed by said dealers respectively at their plants in said Edgewater, New Jersey or West Berkeley, California, and had been delivered to petitioner in said tank cars at its aforesaid soap manufacturing plant at Dayton, Ohio, where said oil was unloaded from the tanks cars and placed in storage tanks located in said manufacturing plant at Dayton, Ohio, from which storage tanks it was drawn from time to time for use in the process of manufacturing soap. The importation and transportation of the oil from the Philippine Islands had completely terminated at Edgewater, New Jersey or West Berkeley, California at the time at which said dealer took from the ships the oil of which a part was later sold and delivered to petitioner and placed same in its own plant or warehouse at Edgewater or West Berkeley; and the interstate commerce or transportation of the oil which was sold and shipped by rail to the petitioner terminated upon the arrival at petitioner's Dayton plant of the tank cars into which it had been placed by said dealers at Edgewater or West Berkeley; and the use of the oil in the manufacture of soap did not and could not commence until after the complete termination of both the foreign commerce and transportation and the interstate commerce and transportation of the oil. None of said oil whatever was imported by petitioner from the Philippine Islands or purchased by the petitioner from any grower thereof or dealer therein located in the Philippine Islands.

There is some Philippine coconut oil imported into the United States and used therein without a domestic processing which would subject it to the "tax" provided in Section 602½ of the Revenue Act of 1934.

VI.

Petitioner alleges that it was in January 1935 and before and after that month and is now unable to recover the amounts imposed upon it by the provisions of said Section 602½ relating to the processing of Philippine coconut oil by increasing prices at which it sold or sells its soaps. Such products were sold and are salable only in highly competitive markets; and the selling prices thereof were not and are not and could not and cannot be controlled by the petitioner, but were and are in fact controlled by competitive conditions in the industry. If petitioner undertook to increase the prices of its soaps

to the extent represented by the amount of such processing taxes, it would have been and would be unable to dispose of such products at such increased prices because of market and competitive conditions in the soap industry over which petitioner had and has no control. The three (3) cents per pound imposed by said Section 602½ constituted about thirty (30%) percent of the total manufacturing cost of petitioner's coconut oil soaps. The conditions of and situation in the soap industry and trade were at the time of the enactment of said Section 602½ and have since been such that the addition to its production costs imposed by said section upon Philippine coconut oil made and has continued to make it impossible for petitioner to conduct its business at a profit and subjected petitioner's business to an operating loss. Previous to the effectiveness of said Section 602½, petitioner had been able to conduct its business at a substantial profit, but since the effectiveness of said section it has suffered a substantial operating loss, notwithstanding that its business has been prudently, economically and efficiently managed and conducted; and this loss results from the provisions of said Section 602½ imposing upon the first domestic processing of Philippine coconut oil "a tax of 3 cents per pound to be paid by the processor".

VII.

Petitioner further states that the Philippine Independence Act (Act of March 24, 1934, 48 U. S. C. A., #1231 to 1247) has been in full force and effect from and after May 1, 1934, and has been in full force and effect since the enactment of said Section 602½ of the Revenue Act of 1934 and is now in full force and effect.

The constitution for the government of the Commonwealth of the Philippine Islands has been formulated and drafted; has been submitted to the President of the United States; has been certified by the President to conform substantially with the provisions of the Philippine Independence Act (Act of March 24, 1934, 48 U. S. C. A., Sections #1231 to 1247); has been submitted to the people of the Philippine Islands at an election; has been ratified at said election by a majority of the votes cast; an election has been held to select officers of the government of the Commonwealth of the Philippine Islands provided for in said constitution of that Commonwealth; a Proclamation has been issued by the President of the United States announcing the results of the election;

the new government of the Philippine Islands has been inaugurated and taken office, and has entered upon its rights, privileges, powers, and duties as provided by the said constitution of the Commonwealth of the Philippine Islands and by the said Philippine Independence Act.

That petitioner has been informed and believes, and therefore avers the fact to be that the Philippine Islands are no longer an insular possession of the United States but are now a separate nation and commonwealth, with its own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States.

The Philippine Government has not provided by any law for any subsidy to be paid to the producers of copra, coconut oil or allied products.

VIII.

As required by said section of the Revenue Act of 1934, the said $995.85 and all the other sums paid by petitioner upon the processing of Philippine coconut oil since said Section 602½ took effect and all sums similarly paid by other soap manufacturers and other processors of Philippine coconut oil have been placed in a separate fund held exclusively for the benefit of and to be paid over in its entirety to the Treasury of the Philippine Islands.

IX.

Petitioner further alleges that the object and purpose of Congress in imposing, upon the processing of Philippine coconut oil, the so-called taxes mentioned in said Section 602½ of the Revenue Act of 1934 was not to raise revenues with which to pay the debts or provide for the common defense or general welfare of the United States or for the support of or operation of the Government of the United States, but that said object and purpose of said section, as appears on the face thereof as well as from the proceedings in Congress while said section was pending, was to regulate the volume of production and the selling prices of certain vegetable oils and fats produced within the United States by compelling soap manufacturers and other manufacturers using coconut oil to substitute said domestic vegetable oils in place of coconut oil in the manufacture of their soaps. The said Section 602½ is a statutory plan to regulate intrastate production and manufacture.

X.

All of the provisions of said Section 602½ relating to Philippine coconut oil, namely the so-called processing tax, the holding of the proceeds thereof as a separate fund, the payment of such separate fund to the Treasury of the Philippine Islands and the cessation of such payment after the Philippine Government provides by law for a subsidy to producers of copra and coconut oil, are interrelated, intertwined, interdependent and integrated parts of one legislative plan and of one scheme of legislation and are therefore inseparable.

XI.

Petitioner further states that under the provisions of the said Section 602½ of the Revenue Act of 1934, the moneys required to be paid by the petitioner on its processing of Philippine coconut oil is required to be placed in a separate fund and paid over to the Treasury of the Philippine Islands. Section 8 of Article I of the Constitution of the United States provides that "Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States". A tax laid and collected solely and entirely to be paid to the Treasury of the Philippine Islands is not for the payment of the debts of nor for the common defense of nor for the general welfare of the United States and consequently the laying of said tax on and collection thereof from the petitioner and others for the payment over thereof into the Treasury of the Philippine Islands does not come within the constitutional scope of the taxing power of Congress, and said Section 602½, in all its provisions relating to Philippine coconut oil, including the laying and collection of processing taxes, is unconstitutional and void and in violation of said Section 8 of Article I.

XII.

The processing taxes on coconut oil imposed by said Section 602½ of the Revenue Act of 1934 were not taxes or excises laid or collected for the purpose of the payment of the debts of the United States or for the purpose of providing for the common defense or general welfare of the United States, and were not laid or collected for the support of the Government of the United States, but were in fact laid and collected for payment to and the

unrestricted use by and benefit of the Government of the Philippine Islands; and therefore the said taxes are not authorized by but on the contrary are violative of the provisions of Section 8 of Article I of the Constitution of the United States, and for the same reasons are violative of the Fifth Amendment.

XIII.

Plaintiff further states that the laying and collection of the processing tax provided in said Section 602½ upon Philippine coconut oil was not for the purpose of raising revenues with which to pay the debts or provide for the common defense or general welfare of the United States or for the support of the Government of the United States, but was for the purpose of imposing a special and heavy burden upon soap manufacturers and other processors and users of Philippine coconut oil in the United States for the special benefit and privilege of the growers, processors and users of other oils made from products grown in the United States, and constitute an expropriation of money from one group of citizens of the United States, namely, the manufacturers of soap and other processors of Philippine coconut oil, for the benefit of another group, and, for these reasons, said provisions of said Section 602½ are in violation of Section 8 of Article I of the Constitution of the United States and of the Fifth Amendment of the Constitution of the United States.

XIV.

The processing "tax" on Philippine coconut oil as imposed by Section 602½ is in violation of the Fifth Amendment, in that one group of citizens of the United States, being petitioner and others similarly situated, are deprived of their property and subjected to an excessive burden not for the general revenues of the Government of the United States or for the support of the Government of the United States, but for the exclusive benefit of and exclusive payment over to another group, namely, the government of the Philippine Islands.

XV.

As the entire proceeds of the said processing "tax" on Philippine coconut oil, regardless of the amount thereof, are to be paid over to the Philippine Treasury, the tax bears no reasonable relationship whatever to nor

represents any exercise of reason or discretion in the determination of the needs of the Philippine Islands or the amount required for whatever purposes the funds paid over are intended to serve, and said tax, if it were to be treated as an exercise of the taxing power, is completely arbitrary and the heavy burden it imposed on petitioner and others similarly situated was a deprivation of property without due process of law and therefore violative of the Fifth Amendment.

XVI.

Petitioner further states that the laying and collection of the "tax" provided in said Section 602½ upon the processing of Philippine coconut oil was not for the purpose of raising revenues with which to pay the debts or provide for the common defense or general welfare of the United States or the support of the Government, but represent and are part of a plan, under the guise of a tax statute, to regulate and control petitioner's intrastate business of manufacturing soap by compelling it and other manufacturers using coconut oil to discontinue in whole or in part the use of coconut oil and to substitute therefore oils and fats produced domestically by dairy farmers and other domestic agricultural producers; and therefore said Section 602½, or that part of it which lays a processing tax upon the use of Philippine coconut oil by the petitioner and other soap manufacturers in the United States, is in contravention of the Ninth and Tenth Amendments of the Constitution of the United States, in that it is a regulation of intrastate manufacture and therefore a regulation by Congress of a subject outside of its constitutionally granted powers.

XVII.

Petitioner further states that the laying and collection of the "tax" provided in said Section 602½ upon the proceessing of Philippine coconut oil was not for the purpose of raising revenues with which to pay the debts or provide for the common defense of general welfare of the United States or the support of the Government, but represent and are a part of a plan, under the guise of a tax statute, to regulate the intrastate domestic production of and the prices of certain vegetable oils; and therefore said section 602½, or that part of it which lays a processing tax upon the use of Philippine coconut oil

by the petitioner and other soap manufacturers in the United States, is in contravention of the Ninth and Tenth Amendments of the Constitution of the United States, in that it is a regulation of intrastate agricultural production and therefore outside of the constitutionally granted powers of Congress.

XVIII.

In laying such a tax on Philippine coconut oil as is provided for in said Section 602½ and in providing that the same shall be held as a separate fund and paid to the Treasury of the Philippine Islands, the Congress has violated the provisions of Clause 7, Section 9, of Article I of the Constitution of the United States.

XIX.

The processing tax on Philippine coconut oil imposed by said Section 602½ of the Revenue Act of 1934 is not a tax or excise laid or collected for the purpose of the payment of the debts of the United States or for the purpose of providing for the common defense or general welfare of the United States or for the support of the Government of the United States; and the imposition thereof exclusively upon the manufactures of soap and other processors of Philippine coconut oil constitutes an inequality and a deprivation of property without due process of law violative of the Fifth Amendment.

XX.

The so-called "tax" on Philippine coconut oil cannot be upheld as a regulation of foreign or interstate commerce since all commerce in the oil ceases before the processing begins and the processing itself is exclusively intrastate.

XXI.

For any, each and every of the above reasons and upon the facts and the law, the collection of the said $995.85 from your petitioner was erroneous and illegal, and your petitioner is entitled to a refund of the said sum of $995.85, together with interest thereon at 6% per annum from the 28th day of February, 1935, the date said sum was paid by the petitioner, and that the United States is indebted to the petitioner for that sum with said interest.

Petition.

WHEREFORE, your petitioner prays for a judgment against the United States of America upon the facts and law for the principal sum of Nine Hundred and Ninety-five and 85/100 ($995.85) Dollars, with interest at 6% from the 28th day of February, 1935, together with its reasonable costs and disbursements and for such other and further relief in the premises as may be just.

Moulinier, Bettman & Hunt,
Attorneys for Petitioner.

(Duly verified)

Sec. 602½. Processing Tax on Certain Oils.

"(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm pal kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound to be paid by the processor, upon the first domestic processing of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence, shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials of the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of

Sec. 602½. Processing Tax on Certain Oils (Continued).

Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but it at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

"(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessments by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

• • • •

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, in so far as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section."

CLAIM.

The Collector will indicate in the below the kind of claim filed, and fill in the certificate on the reverse side.

Refund of Tax Illegally Collected.

Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

Abatement of Tax Assessed (not applicable to estate or income taxes).

State of Ohio
County of Hamilton, ss:

The Cincinnati Soap Company, New Telephone Bldg., Seventh & Elm Sts. Cincinnati, O.

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named and that the facts given below are true and complete.

1. District in which return (if any) was filed Southern District of Ohio at Cincinnati, O.
2. Period (if or income tax, make separate form for each taxable year) from 1/1/35 to 1/31/35.
3. Character of assessment or tax, processing tax on oils.
4. Amount of assessment, $995.85; dates of payment February 27, 1935.
5. Date stamps were purchased from the Government.
6. Amount to be refunded $995.85.
7. Amount to be abated (not applicable to income or estate taxes) $
8. The time within which this claim may be legally filed expires, under Section 3228 USRS of the Revenue Act of 19—, on Feb. 27, 1939.

The deponent verily believes that this claim should be allowed for the following reasons:

The coconut oil upon whose processing the said tax was levied and paid was wholly the production of the Philippine Islands and was produced wholly from materials of the growth or production of the Philippine Islands. Consequently, under the provisions of Section 602½ of the Revenue Act of 1934, the said tax paid by The Cincinnati Soap Company is required to be placed in a separate fund and paid to the Treasurer of the Philippine Islands. Section 8 of Article I of the Constitution of the United States provides that the "Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the com-

mon defense and general welfare of the United States". A tax laid and collected for payment to the Treasury of the Philippine Islands does not come within the scope of said taxing power, and consequently the laying and collection of the aforesaid tax on and from the Cincinnati Soap Company was not within the constitutional power of Congress.

Furthermore, the laying and collection of said tax was not for the purpose of raising revenues with which to pay the debts or provide for the common defense and general welfare of the United States, but was for the purpose of imposing a special burden upon the users of coconut oil in the United States for the special benefit and privilege of the growers, processors and users of other oils made from products grown in the United States. Furthermore, said laying and collection of said tax constitutes a regulating of claimant's intra-state business of manufacturing its products, the purpose and intent of said section being to force claimant and other soap manufacturers to discontinue in whole or in part the use of the oils made taxable in said section of the Revenue Act of 1934 and to substitute therefore oil and fats produced domestically by farmers and other interests in the United States. Consequently, the provisions of said Section 602½ of the Revenue Act of 1934 are in violation of Section 8 of Article I of the Constitution of the United States, also of the Fifth Amendment of the Constitution of the United States and also of the Tenth Amendment of the Constitution of the United States.

As the laying and collection of the said tax do not fall within the taxing power of Congress and violate the Constitution as aforesaid, the said tax, for which this claim of refund is made, was erroneous and illegal.

Sworn to and subscribed before me this
———— day of January, 1936.
Ludwig Abel, Notary Public.

Signed The Cincinnati Soap Company
Albert M. Steiner,
Vice President.

AFFIDAVIT.

(Filed September 28, 1936.)

State of Ohio,
Hamilton County, ss:

Alfred Bettman, being first duly sworn, says that he is a member of the firm of Moulinier, Bettman & Hunt, attorneys for The Cincinnati Soap Company, plaintiff in the above captioned case; that on the 28th day of September, 1936, he caused a copy of the Amendment to Petition as filed in the above captioned case to be served upon Hon. Francis C. Canny, the United States District Attorney for the Southern District of Ohio, by delivering such copy to said United States District Attorney personally in his office in the United States Government Building in Cincinnati, Ohio, that he did mail by registered letter a copy of said Amendment to Petition to the Attorney General of the United States, by himself placing such copy, together with a letter of transmissal, in an envelope addressed to The Attorney General, Washington, D. C., sealing said envelope, placing the necessary postage thereon and registering and mailing same from the General Post Office at Cincinnati, Ohio.

Alfred Bettman.

Sworn to and subscribed before me this 28th day of September, 1936.

Kay Hughes, Notary Public,
in and for Hamilton County, Ohio.
My commission expires Jan. 3, 1937.

AFFIDAVIT.

(Filed July 6, 1936.)

State of Ohio,
Hamilton County, ss:

Alfred Bettman, being first duly sworn, says that he is a member of the firm of Moulinier, Bettman & Hunt,

attorneys for The Cincinnati Soap Company, plaintiff in the above captioned case; that on the 6th day of July, 1936, he caused a copy of the petition as filed in the above captioned case to be served upon Hon. Francis C. Canny, the United States District Attorney for the Southern District of Ohio, by delivering such copy to said United States District Attorney personally in his office in the United States Government Building in Cincinnati, Ohio; that he did mail by registered letter a copy of said petition to the Attorney General of the United States, by himself placing such copy, together with a letter of transmissal, in an envelope addressed to Honorable Homer S. Cummings, Attorney General of the United States, sealing said envelope, placing the necessary postage thereon and registering and mailing same from the General Post Office at Cincinnati, Ohio.

Alfred Bettman.

Sworn to and subscribed before me this 6th day of July, 1936.

Kay Hughes, Notary Public
in and for Hamilton County, O.
My commission expires Jan. 2, 1937.

DEMURRER.

(Filed July 23, 1936.)

Comes now the United States of America, defendant in the above entitled cause, by Francis C. Canny, United States Attorney in and for the Southern District of Ohio, Western Division, and Assistant United States Attorney for said District, its attorneys, and respectfully demurs to plaintiff's complaint filed herein and for grounds of said demurrer says:

Demurrer.

I.

That said complaint fails to state a cause of action against this defendant because it shows that the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States.

Respectfully submitted,

Francis C. Canny,
United States Attorney.
Robert E. Marshall,
Assistant United States Attorney.

AMENDMENT TO PETITION.

(Filed September 28, 1936.)

Now comes the petitioner, The Cincinnati Soap Company, and for amendment and supplement to its petition in this action, particularly that portion thereof numbered III, and affirming and realleging all of the allegations of said petition, hereby respectfully shows that on July 6, 1936 it did file with the Bureau of Internal Revenue its amended claim for the refund of the said Nine Hundred and Ninety-five and 85/100 ($995.85) Dollars, a copy of which amended claim is hereto attached, and which amended claim was rejected by the Commissioner of Internal Revenue on the 28th day of July, 1936, the following being the Commissioner's stated grounds for such rejection:

> "Reference is made to your claim for refund of $995.85, representing tax paid under the provisions of Section 602½ of the Revenue Act of 1934, on the first domestic processing of coconut oil during the month of January 1935.

Amendment to Petition.

The claim is rejected in full for the reason that it is a duplicate of claim No. 35168 which was rejected on May 14, 1936."

Moulinier, Bettman & Hunt.
Attorneys for Petitioner.

(Duly verified)

AMENDED CLAIM.

To be Filed with the Collector where Assessment was Made or Tax Paid.

State of Ohio,
County of Hamilton, ss:

Name of taxpayer or purchaser of stamps: The Cincinnati Soap Company.

Business address: New Telephone Bldg., Seventh & Elm Sts., Cincinnati, Ohio.

The deponent, being duly sworn according to law, deposes and says that this amended statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: Southern District of Ohio at Cincinnati, Ohio.
2. Period (if for income tax, make separate form for each taxable year) from 1/1/35 to 1/31/35.
3. Character of assessment or tax: Processing tax on oils.
4. Amount of assessment, $995.85; date of payment, February 27, 1935.
5. Date stamps were purchased from the Government:
6. Amount to be refunded: $995.85.
7. Amount to be abated (not applicable to income or estate taxes):
8. The time within which this claim may be legally filed expires, under Section 3228 USRS of the Revenue Act of 19...., on February 27, 1939.

The deponent verily believes that this claim should be allowed for the following reasons:

The coconut oil upon whose processing the said tax was levied and paid was wholly the production of the Philippine Islands and was produced wholly from materials of the growth or production of the Philippine Islands. Consequently, under the provisions of Section 602½ of the Revenue Act of 1934, the said tax paid by The Cincinnati Soap Company is required to be placed

in a separate fund and paid to the Treasurer of the Philippine Islands. Section 8 of Article I of the Constitution of the United States provides that the "Congress shall have power to lay and collect taxes, duties, imposts and excises to pay the debts and provide for the common defense and general welfare of the United States." A tax laid and collected for payment to the Treasury of the Philippine Islands does not come within the scope of said taxing power, and consequently the laying and collection of the aforesaid tax on and from the Cincinnati Soap Company was not within the constitutional power of Congress.

Furthermore, the laying and collection of said tax was not for the purpose of raising revenues with which to pay the debts or provide for the common defense and general welfare of the United States, but was for the purpose of imposing a special burden upon the users of coconut oil in the United States for the special benefit and privilege of the growers, processors and users of other oils made from products grown in the United States. Furthermore, said laying and collection of said tax constitutes a regulating of claimant's intra-state business of manufacturing its products, the purpose and intent of said section being to force claimant and other soap manufacturers to discontinue in whole or in part the use of the oils made taxable in said section of the Revenue Act of 1934 and to substitute therefor oil and fats produced domestically by farmers and other interests in the United States. Consequently, the provisions of said Section 602½ of the Revenue Act of 1934 are in violation of Section 8 of Article I of the Constitution of the United States, also of the Fifth Amendment of the Constitution of the United States, and also of the Tenth Amendment of the Constitution of the United States.

Furthermore, the laying and collection of said tax was not for the purposes of the payment of the debts of the United States or providing for the common defense or general welfare of the United States or for the support of the Government of the United States, but was laid and collected for payment to and the unrestricted use by and benefit of the government of the Philippine Islands, and therefore said tax was not authorized by and was violative of the provisions of Section 8 of Article I of the Constitution of the United States and of the Fifth Amendment of the Constitution.

Furthermore, the laying and collection of said tax was in violation of the Fifth Amendment of the Constitution of the United States, in that one group, including this

claimant, is deprived of its property and subjected to an excessive burden not for the general revenue of the Government of the United States or for the support of that Government, but for the exclusive benefit of and exclusive payment over to another group, namely the government of the Philippine Islands.

Furthermore, as the entire proceeds of said tax, regardless of the amount thereof, are to be paid over to the Philippine Treasury, the tax bears no reasonable relation whatever to or represents any exercise of reason or discretion in the determination of the needs of the Philippine Islands or the amount required for whatever purpose funds paid over are intended to serve, and said tax is therefore completely arbitrary and a deprivation of property without due process of law and violative of the Fifth Amendment of the Constitution of the United States and Section 8 of Article I of the said Constitution.

Furthermore, said tax was not for the purpose of raising revenues with which to pay the debts or provide for the common defense or general welfare of the United States or support of the Government, but represented and was part of a plan under the guise of a tax statute to regulate and control claimant's intrastate business in manufacture of soap by compelling claimant and other manufacturers to discontinue in whole or in part the use of coconut oil and to substitute oils and fats produced domestically by the dairy farmers and other agricultural producers, and therefore the laying and collection of said tax was in contravention of the Ninth and Tenth Amendments of the Constitution of the United States, in that it was a regulation of intrastate manufacture and therefore a regulation by Congress of a subject outside of itse constitutionally granted powers.

Furthermore, the laying and collection of said tax was not for the purpose of raising revenues with which to pay the debts or provide for the common defense or general welfare of the United States or the support of the Government, but was represented and was part of a plan under the guise of a tax statute to regulate the intrastate domestic production of and the prices of certain domestic vegetable oils and therefore was in contravention of the Ninth and Tenth Amendments of the Constitution of the United States, in that it was a regulation of intrastate agricultural production and therefore outside of the constitutionally granted powers of Congress.

Furthermore, the laying and collection of said tax and in the providing that the same shall be held as a separate fund and paid to the Treasury of the Philippine Islands,

has violated the provisions of Clause 7, Section 9 of Article I of the Constitution of the United States.

Furthermore, in the laying and collection under Section 602½ of the Revenue Act of 1934 of said tax upon the manufacturers of soap and other processors of Philippine coconut oil, the same constitutes an inequality and deprivation of property without due process of law violative of the Fifth Amendment of the Constitution of the United States.

Furthermore, said tax on Philippine coconut oil cannot be upheld as a regulation of foreign or intrastate commerce, since all commerce in the oil ceased before the processing began and the processing itself was exclusively intrastate.

As the laying and collection of the said tax do not fall within the taxing power of Congress and violate the Constitution as aforesaid, the said tax, for which this amended claim of refund is made, was erroneous and illegal.

Signed: The Cincinnati Soap Company
By Albert Steiner, Vice-President.

Sworn to and subscribed before me this 10th day of May, 1936.

Conrad Magrish, Notary Public.

DEMURRER TO PETITION AS AMENDED.

(Filed October 9, 1936.)

Now comes the United States of America, defendant in the above entitled cause, by Francis C. Canny, United States Attorney for the Southern District of Ohio, and Frederic W. Johnson, Assistant United States Attorney for said District, its attorneys, and respectfully demurs to plaintiff's petition as amended on September 26, 1936, and for grounds of said demurrer says:

I.

That said petition as so amended fails to state a cause of action against this defendant because it shows that

the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States.

Respectfully submitted.

Francis C. Canny,
United States Attorney.

Frederic W. Johnson,
Assistant United States Attorney.

ORDER SUSTAINING DEMURRER AND JUDGMENT FOR DEFENDANT.

(Filed January 5, 1937.)

This cause coming on to be heard this day upon the defendant's demurrer to the plaintiff's petition as amended, the Court upon full consideration thereof finds that the provisions of Section 602½ of the Revenue Act of 1934, imposing a tax upon the processing of coconut oil wholly of Philippine production or produced wholly from materials of Philippine growth or production, are valid and constitutional and that therefore said demurrer is well taken and the Court sustains the same; thereupon the plaintiff not asking to plead further.

IT IS THEREFORE ADJUDGED AND ORDERED that the plaintiff's petition as amended be and the same is hereby dismissed at plaintiff's costs.

To all of which plaintiff duly excepts.

Nevin,
United States District Judge.

Moulinier, Bettman & Hunt,
Attorneys for Plaintiff.

Frederic W. Johnson,
Assistant U. S. Attorney,
for Defendant.

DECISION ON DEMURRER.

(Filed January 5, 1937.)

NEVIN, District Judge:

On July 6, 1936, plaintiff herein filed its petition, and on September 28, 1936, filed an amendment thereto. The cause is now before the court on a demurrer, filed October 9, 1936, to the petition as amended.

Plaintiff prays for judgment against the United States, defendant herein, in the sum of $995.85, with interest thereon at 6% from the 28th day of February, 1935, plaintiff claiming that said amount is due it as a refund from monies erroneously and illegally collected from it on account of coconut oil processing taxes assessed and collected under Section 602½ of the Revenue Act of 1934, for the month of January, 1935.

Counsel argued the demurrer to the court orally and extensive and very interesting briefs have been filed by counsel for the respective parties. The last of these briefs were filed on December 4, 1936. Inasmuch as the case is before the court on defendant's demurrer, the proper allegations of the bill are assumed to be true and have been so considered by the court in arriving at its conclusion.

Subsequent to the filing of the briefs, counsel stated to the court that it is the desire of both sides to expedite the case and to have it determined as speedily as possible by this court. It was further stated by counsel that to that end the court was requested, if agreeable, merely to state its conclusion on the pending demurrer without writing an opinion. The court has, however, read and thoroughly considered the briefs and arguments.

Upon a consideration thereof, the court is of the opinion that the demurrer is well taken and that it should be and it is sustained upon the grounds set forth therein, to-wit, that the "petition as so amended fails to state a cause of action against this defendant because it shows that the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States," and for the reasons advanced in the brief of defendant in support of the demurrer.

An order may be drawn sustaining the demurrer and dismissing the petition as amended at plaintiff's costs.

Nevin, J.

Decision on Demurrer.

APPEARANCES:

For Plaintiff: Moulinier, Bettman & Hunt,
Cincinnati, Ohio.

For Defendant: Robert H. Jackson,
Assistant Attorney General.

Francis C. Canny,
U. S. Attorney.

Andrew D. Sharpe,
John Paul Jackson,
James E. Murphy,
Charles A. Horsky,
Special Assistants to the
Attorney General.

PETITION FOR APPEAL.

(Filed January 5, 1937.)

TO THE HONORABLE ROBERT R. NEVIN, JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION:

The above named plaintiff, feeling itself aggrieved by the order sustaining the demurrers of the defendant to the petition and the amendment to the petition of the plaintiff and by the judgment for defendant, made and entered in this cause on the 5th day of January, A. D. 1937, does hereby appeal from said order and judgment to the Circuit Court of Appeals for the Sixth Circuit, for the reasons specified in the assignment of errors, which is filed herewith, and it prays that its appeal be allowed and that citation issue as provided by law, and that a transcript of the record, proceedings and papers upon which said order and judgment were based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Sixth Circuit, sitting at Cincinnati, Ohio.

Petition for Appeal.

And your petitioner further prays that the proper order touching the security to be required of it to perfect its appeal be made.

Moulinier, Bettman & Hunt,
Attorneys for The Cincinnati Soap Company, plaintiff.

The above petition granted and the appeal allowed upon giving bond conditioned as required by law in the sum of $100.00.

Nevin,
Judge, United States District Court for Southern District of Ohio, Western Division.

ASSIGNMENT OF ERRORS.

(Filed January 5, 1937.)

And, now, on this the 5th day of January, A. D., 1937, came the plaintiff by its attorneys and says that the order sustaining the demurrer of the defendant to the petition of the plaintiff as amended and the judgment for defendant entered in the above cause on the 5th day of January, A. D. 1937, are erroneous and unjust to the plaintiff:

FIRST: In sustaining the demurrer of the defendant to the petition of the plaintiff as amended.

SECOND: In rendering judgment for the defendant upon the petition of plaintiff as amended and the demurrer of defendant thereto.

THIRD: In holding and determining the provisions of Section 602½ of the Revenue Act of 1934 which imposed upon the first domestic processing of coconut oil wholly of Philippine production or produced wholly from materials of Philippine growth or production a tax of three (3) cents per pound is valid and constitutional.

Assignment of Errors.

FOURTH: In failing to hold and determine that the provisions of Section 602½ of the Revenue Act of 1934 relating to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, including the imposition of a tax upon the processing of such Philippine oil, are invalid and unconstitutional.

FIFTH: In failing to determine and hold that said provisions of said Section 602½ of the Revenue Act of 1934 relating to a processing tax upon Philippine coconut oil are invalid and unconstitutional for the reason that they do not fall within and are beyond the scope of the powers granted to Congress by the Constitution of the United States.

SIXTH: In failing to hold and determine that said provisions of said Section 602½ of the Revenue Act of 1934 are invalid and unconstitutional because they constitute an invalid exercise of the powers of Congress under the Constitution of the United States.

SEVENTH: In failing to hold and determine that said provisions of said Section 602½ of the Revenue Act of 1934 are unconstitutional and invalid for the reason that they do not fall within the taxing power of Congress granted by the Constitution of the United States in Section 8 of Article I of the Constitution of the United States.

EIGHTH: In failing to hold and determine that said provisions of Section 602½ of the Revenue Act of 1934 are invalid and unconstitutional in that they constitute an unconstitutional delegation by Congress of its legislative powers.

NINTH: In failing to hold and determine that said provisions of said section of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution of the United States, and are consequently invalid and unconstitutional.

TENTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate the Tenth Amendment of the Constitution of the United States and are therefore invalid and unconstitutional.

ELEVENTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution of the United States and are therefore invalid and unconstitutional.

Assignment of Errors.

TWELFTH: In failing to overrule the demurrer of the defendant to the petition of plaintiff as amended.

WHEREFORE, the plaintiff prays that said order sustaining demurrer and said judgment for the defendant be reversed, and that the Circuit Court of Appeals render upon the record a judgment for the plaintiff as prayed for in the petition, or other proper judgment on the record.

Moulinier, Bettman & Hunt,
Attorneys for
The Cincinnati Soap Company, Plaintiff.

BOND ON APPEAL

(Filed January 5, 1937.)

KNOW ALL MEN BY THESE PRESENTS: That we, The Cincinnati Soap Company, as principal, and The Aetna Casualty and Surety Company, as surety, acknowledge ourselves to be jointly indebted to The United States of America, appellee in the above cause, in the sum of $100.00 Dollars, conditioned that, whereas on the 5th day of January, A. D. 1937, in the District Court of the United States for the Southern District of Ohio, Western Division, in a suit depending in that court, wherein The Cincinnati Soap Company was plaintiff and The United States of America was defendant, numbered on the Law Docket as 5049, an order sustaining demurrers and judgment for defendant was rendered against said The Cincinnati Soap Company, and the said The Cincinnati Soap Company having obtained an appeal to the United States Circuit Court of Appeals for the Sixth Circuit and filed a copy thereof in the office of the Clerk of the Court to reverse said order and judgment, and a citation directed to the said The United States of America, citing and admonishing it to be and appear at a session of the United States Circuit Court of Appeals for the Sixth Circuit, to be held in the City of Cincinnati, Ohio, on the 4th day of February, 1937 next.

Bond on Appeal.

Now, if the said The Cincinnati Soap Company shall prosecute its appeal to effect and answer all costs if it fails to make its plea good, then the above obligation to be void, else to remain in full force and virtue.

The Aetna Casualty & Surety Company
By John P. Ryan, Attorney-in-Fact.
Surety. (Seal)

Approved January 5, 1937.
Nevin, Judge,
United States District Court for the
Southern District of Ohio, Western Division.

THE AETNA CASUALTY AND SURETY COMPANY
Hartford, Connecticut

Certificate of Authority of Attorney (s) -in-Fact.

KNOW ALL MEN BY THESE PRESENTS, That THE AETNA CASUALTY AND SURETY COMPANY, a corporation duly organized under the laws of the State of Connecticut, and having its principal office in the City of Hartford, County of Hartford, State of Connecticut, hath made, constituted and appointed, and does by these presents make, constitute and appoint John P. Ryan, of Cincinnati, Ohio, its true and lawful Attorney (s), with full power and authority hereby conferred to sign, execute and acknowledge, for The Aetna Casualty and Surety Company, as surety, by his sole signature and act any and all bonds, undertakings, and other writings obligatory in the nature of a bond, and to bind The AETNA CASUALTY AND SURETY COMPANY thereby as fully and to the same extent as if the same were signed by the duly authorized officers of THE AETNA CASUALTY AND SURETY COMPANY, and all the acts of said Attorney (s), pursuant to the authority herein given, are hereby ratified and confirmed.

This appointment is made under and by authority of the following provisions of the by-laws of the Company which provisions are now in full force and effect and are the only applicable provisions of said by-laws.

• • • • •

IN WITNESS WHEREOF, THE AETNA CASUALTY AND SURETY COMPANY has caused these presents to be signed by its Secretary, and its corporate seal to be hereto affixed, this 20th day of February, A. D. 1936.

The Aetna Casualty & Surety Company,
By A. R. Sexton, Secretary.

(SEAL)

(Duly verified)

CITATION

(Filed January 5, 1937.)

United States of America, Greeting:

You are hereby notified that in a certain case at law in the United States District Court for the Southern District of Ohio, Western Division, wherein The Cincinnati Soap Company is plaintiff and The United States of America is defendant, an appeal has been allowed the plaintiff therein to the United States Circuit Court of Appeals for the Sixth Circuit. You are hereby cited and admonished to be and appear in said Court thirty days after the date of this citation, to show cause, if any there be, why the order and judgment appealed from should not be corrected and speedy justice done the parties in that behalf.

Witness the Honorable Robert R. Nevin, Judge of the United States District Court for the Southern District of Ohio, Western Division, this 5th day of January, A. D. 1937.

Nevin,
United States District Judge,
Southern District of Ohio, Western Division.

Due personal notice of the above citation is hereby admitted this 5th day of January, A. D. 1937.

Frederic W. Johnson,
Ass't. U. S. Attorney for the United States of America, Appellee.

PRAECIPE FOR TRANSCRIPT OF RECORD

(Filed January 5, 1937.)

To The Clerk of the United States District Court for the Southern District of Ohio, Western Division:

You are hereby directed to make out and to file with the Clerk of the United States Circuit Court of Appeals

for the Sixth Circuit, a transcript of the record in the above entitled case, containing:

a. The petition.
b. The process and return.
c. The demurrer of defendant to petition.
d. The amendment to the petition.
e. The demurrer to the petition as amended.
f. The order of the Court sustaining demurrers and rendering judgment for the defendant.
g. The opinion of the Court.
h. The petition for appeal and the allowance of the appeal.
i. The assignment of errors.
j. The appeal bond and entry approving such bond.
k. The citation in appeal and the acknowledgment of service thereof.

Moulinier, Bettman & Hunt,
Attorneys for The Cincinnati
Soap Company, plaintiff.

CERTIFICATE OF CLERK

United States District Court, Southern District of Ohio, Western Division.

The Cincinnati Soap Company, a corporation under the laws of Ohio,

Plaintiff,

No. 5049. vs.

The United States of America,

Defendant.

I, Harry F. Rabe, Clerk of the District Court of the United States for the District and Division aforesaid, do hereby certify that the foregoing pages numbered from 1 to 30, inclusive, contain a true and correct copy of the record and proceedings indicated in the praecipe found on page 29 herein, as the same appear of record and on file in the office of the Clerk of said Court, in the above-entitled cause.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Cincinnati, Ohio, the ..... day of ....., 19.....

.....
Clerk.

(Seal)

.....
Deputy.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed February 15, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

JAN 16 1937
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1936.

No. 659

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

Alfred Bettman,
Counsel for Petitioner.

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IN THE

Supreme Court of the United States

October Term, 1936.

No. ———.

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

PETITION

The Cincinnati Soap Company, a corporation, prays that a writ of certiorari issue to the United States Circuit Court of Appeals for the Sixth Circuit requiring that the cause in said Court in which the petitioner is the appellant and the respondent, The United States of America, is the appellee, being case No. 7607 in said Court, and which cause is an appeal from a judgment of the United States District Court for the Southern District of Ohio, Western Division, entered January 5, 1937, sustaining a demurrer of the respondent to the petition of the petitioner as amended and rendering judgment for the respondent, be certified to this Court for determination by this Court.

A.

Summary Statement of the Matter Involved.

The sole question in this case is the constitutionality of those provisions of Section 602½ of the Revenue Act of 1934 relating to the processing tax on Philippine coconut oil. The action was brought for a refund of $995.85 paid on February 27th, 1935 on the use by the petitioner of Philippine coconut oil in the manufacture of soap. The Government demurred to the petition, thus eliminating issues of fact. The District Court sustained the demurrer on the ground that said provisions are valid and constitutional, and petitioner not asking to plead further, the Court rendered judgment for the defendant, that is, The United States of America, respondent herein. Petitioner appealed to the United States Circuit Court of Appeals for the Sixth Circuit, and said appeal is now pending in that Court.

The said provisions of Section 602½ of the Revenue Act of 1934 are as follows:

Section 602½—

> "(a) There is hereby imposed upon the first domestic processing of coconut oil * * * a tax of 3 cents per pound, to be paid by the processor. * * * All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purpose of this section the term 'first domestic processing' means the

first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate."

• • • •

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

(Section 602½ is set out in full in the Appendix, infra pages 45-48 incl.)

No provisions of the Revenue Act of 1934, excepting the above, are involved.

The facts and allegations of the petition may be summarized as follows:

The petitioner, The Cincinnati Soap Company, is a corporation engaged in the manufacture of soap, with office in Cincinnati, Ohio and manufacturing plant at Dayton, Ohio; so that its maufacturing or processing was exclusively within Ohio and intrastate. Philippine coconut oil was an ingredient of a large proportion of its soaps, for which there was no substitute. Philippine coconut oil is used by many soap manufacturers in the United States as well as by some other processors. The oil is not imported by the soap manufacturers or processors, but is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded and delivered to such dealers at the ports of entry, and, when so delivered, the importation of the oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers,

the dealers place the oil in railroad tank cars consigned to the plants or warehouses of the soap manufacturers or other users, who unload the tank cars and place the oil in their own storage tanks or other receptacles located in their own respective manufacturing plants; so that the interstate transportation or commerce in the oil terminates before any processing of the oil does or can commence. All this was true of the oil on the use of which plaintiff paid the sum for the refund of which this case was brought. Philippine coconut oil imported into the United States is not all domestically processed, that is, some of it is marketed and used in the United States without any processing which would subject it to the tax provided in Section 602½ of the Revenue Act of 1934.

Petitioner was unable to recover the amounts imposed upon it by said Section 602½ by increasing the prices at which it sold its soaps; for the competitive conditions of the soap market were such that if petitioner undertook to increase the prices of its soaps to the extent represented by the processing tax, it would have been unable to sell its soaps. The 3 cents per pound imposed by the statute increased the price of coconut oil by 100% and constituted about 30% of the total manufacturing cost of petitioner's soaps, and the effect of this processing tax was such as to make it impossible for petitioner to continue to conduct its business at a profit, although up to the time of the imposition of this processing tax, petitioner had been able to conduct its business at a substantial profit.

As introduced in Congress and reported out by the Ways and Means Committee of the House, the Revenue Bill of 1934 provided for a processing tax on a number of different kinds of oil, including coconut oil but without containing any of the special provisions regarding Philippine coconut oil as above quoted. Coconut oil used in the

United States in soap manufacturing and other processings came predominantly, but not exclusively, from the Philippine Islands. The oil processing taxes were placed in the bill at the behest of domestic producers of other vegetable and animal fats and oils, such as lard, tallow, butter, soybean oil, cotton-seed oil and others, for the purpose of increasing the production or prices of these domestic oils and fats.

At the time the revenue bill was introduced and reported, that is, before any of these special Philippine coconut oil provisions were inserted, Congress passed the Philippine Independence Act and this was accepted by the Philippine legislature. This Independence Act exempted from import duties coconut oil imported from the Philippines up to approximately the then amount of the annual importations.

Thereupon, the President of the United States called to the attention of Congress that the coconut oil provisions of the pending revenue bill would violate the agreement made with the Philippine Islands in the Independence Act and the acceptance of that Act by the Philippine legislature, and asked for the elimination of coconut oil from the bill. Out of the debates and actions which followed there ensued the insertion into the bill before its enactment of the aforesaid special provisions regarding Philippine coconut oil, which provisions provide that the proceeds of the imposition upon the processing of Philippine coconut oil shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid to the Treasury of the Philippine Islands, and that if at any time the Philippine Government provides for any subsidy to the producers of copra, coconut oil or allied products, no further payments to the Philippine Treasury shall be made. (Copra is the meat of coconuts from which the coconut oil is extracted.)

Pursuant to the Philippine Independence Act, the Philippine Constitutional Convention was called, and on February 8, 1935 adopted a Constitution of the Philippines, which on March 23, 1935 was approved by the President of the United States and on May 14, 1935 was approved and adopted by the people of the Philippines, and the new government of the Commonwealth of the Philippines was inaugurated on November 15, 1935.

The petitioner contends that said provisions of Section 602½ of the Revenue Act of 1934 relating to Philippine coconut oil, including the imposition of the tax upon the first domestic processing thereof, are unconstitutional. This contention is based upon several grounds stated in the petition (R. 7-10 incl.). These grounds are summarized towards the beginning of the brief attached to this petition, and may be stated in a general way to be:— the tax is imposed and collected solely for payment into the treasury of the Philippine Commonwealth, and not one penny of it is collected for United States revenue or for the Treasury of the United States or the financing of any activity of the United States or the support of the Government of the United States. The entire proceeds are placed at the exclusive disposal of the Government of the Philippine Commonwealth without any direction or control by the United States over its use. Absolutely none of the activities of the United States in the exercise of its powers or responsibilities in or in relation of the Philippine Islands is intended to be or authorized to be financed from the collections of this tax: and the financing of the exercise by the United States of the powers and responsibilities which, in the Philippine Independence Act, it has reserved in and over the Philippines is appropriated from funds in the Treasury of the United States, and this Philippine coconut oil processing

tax fund is not available for and may not be touched for these or any other activities of the United States. Consequently, the Philippine coconut oil provisions of the Revenue Act of 1934 do not fall within the scope of the taxing powers of Congress granted in Section 8 of Article I of the Constitution, as they are for a "local" (namely, the Philippine Islands) and not a "general" welfare, and, the Philippine Islands not being a part of the United States, are not for the welfare "of the United States" within the meaning of the revenue clauses of the Constitution. For these reasons, and being a high and burdensome tax upon one group within the United States, namely the soap manufacturers and other processors of Philippine coconut oil, these provisions also violate the Fifth Amendment. Furthermore, these provisions represent and were part of a plan for affecting the volume of production of and the prices of the intra-state domestic production of certain animal and vegetable fats and oils, and, for this additional reason, these provisions of Section 602½ do not constitute a tax within the scope or meaning of Section 8 of Article I of the Constitution. They cannot be sustained as an import tax or as a regulation of interstate or foreign commerce, for the imposition is not upon all imports of coconut oil from the Philippine Islands but upon the processing in the United States of coconut oil, and all commerce in the oil, whether foreign or interstate, ceases prior to any processing. The direction in the statute for payment of the collection into the Philippine Treasury is not, correctly speaking, an appropriation, but is a direct transmission of the collections to the Philippine Treasury, the revenue agencies of the United States acting merely as a conduit or as collecting and transmitting agencies. If, for purpose of consideration of the constitutional questions, said direction be assumed to be an appropriation, then these Philip-

pine coconut oil provisions also violate Clause 7 of Section 9 of Article I of the Constitution, together with the Fifth Amendment, in that, arbitrarily and without any thought whatever as to relationship between the amount and the need, the entire proceeds of the tax, no matter how little or large the amount may prove to be, are collected for payment bodily into the Philippine Treasury.

Reasons for Granting the Writ.

The United States District Court has decided an important question of federal law which has not been but should be settled by this Court, and the public interest will be promoted by prompt settlement in this Court of the question involved, namely, the constitutionality of the Philippine coconut oil tax provisions of Section 602½ of the Revenue Act of 1934.

As is illustrated by the facts concerning the petitioner, the tax has a destructive effect upon the possibility of profit by many soap manufacturers, and is, owing to doubts about its constitutionality, a disturbing, dislocating and confusing element in the soap industry and, no doubt, in other industries which use coconut oil.

About ten injunction suits were filed in different parts of the country. In two of the cases, the District Courts held the statutory provisions to be unconstitutional and granted permanent injunctions. The Circuit Court of Appeals reversed these judgments exclusively upon the remedy question and did not go into the constitutional question. Certiorari to the Court of Appeals in these two cases was petitioned for in this Court and denied.

In three of the injunction cases, the District Court refused injunction exclusively upon the remedy question, without going into the constitutional questions. In two of these, appeals were filed in the Circuit Court of Appeals,

where the cases are stated to be held pending an authoritative decision on the constitutional question.

In five of said injunction cases, temporary restraining orders have been issued, and the cases are pending in the District Courts at that stage.

In addition to the instant case, one refunder action has been brought, and, as in the present case, the Government's demurrer sustained.

An injunction case was brought in the District of Columbia to enjoin the transmission to the Philippine Treasury of the collected proceeds of the processing tax on Philippine coconut oil. The Court of Appeals in and for the District of Columbia has denied the injunction exclusively on remedial grounds and without any ruling on any constitutional issue. This Court denied certiorari, and the case has been or is about to be appealed to this Court. In the meantime, owing to the doubts about the constitutionality of the tax, none of the moneys have been transmitted to the Philippine Treasury, and the accumulated and non-transmitted collections amount to about $41,000,000.00. As has been above outlined, the tax constitutes a violation of the agreement made with the Philippine Islands in the Philippine Independence Act, and the situation constitutes one of the serious strains upon the relations between the United States and the new Philippine Commonwealth.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding that Court to certify and to send to this Court, for its review and determination, on a day certain to be therein named the full and complete transcript of the record of all proceedings in the case numbered and entitled on its Docket as No. 7607, *The Cincinnati Soap Company, a cor-*

poration, Appellant, v. *The United States of America, Appellee,* and that the judgment of the United States District Court in and for the Southern District of Ohio, Western Division, in the case numbered and entitled No. 5049 At Law, *The Cincinnati Soap Company, a corporation, plaintiff,* v. *The United States of America, defendant,* may be reversed by this Honorable Court and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

The Cincinnati Soap Company,

By: Alfred Bettman,

Counsel for Petitioner.

IN THE

Supreme Court of the United States

October Term 1936.

No. ———.

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

vs.

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I.

Opinion Below.

In the judgment entry (R. 22) the District Court found that "the provisions of Section 602½ of the Revenue Act of 1934, imposing a tax upon the processing of coconut oil wholly of Philippine production or produced wholly from materials of Philippine growth or production, are valid and constitutional." The said court wrote a short memorandum entitled "Decision on Demurrer" (R. 23) in which the court simply stated that, as the parties had requested that the case be expedited, it was not writing an opinion, that it had read and thoroughly considered the briefs and

arguments, and found the demurrer well taken upon the ground set forth in the demurrer, namely, that the tax was assessed and collected under valid and constitutional laws of the United States.

II.

Jurisdiction

(a) The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, 43 Stat. 938.

(b) The judgment sought to be reviewed was entered in the United States District Court in and for the Southern District of Ohio, Western Division, on January 5, 1937 (R. 22). The appeal was filed in the Circuit Court of Appeals for the Sixth Circuit and docketed in that court on January [illegible], 1937. (R. first page).

(c) The case is for a refunder of a tax imposed by provisions of a federal statute on the ground of the unconstitutionality of those provisions. It was brought in a United States District Court, and heard and decided upon the petition of the plaintiff (petitioner) as amended and the Government's demurrer thereto. (R. 1-14 incl., 16-25 incl.) Appeal was filed in a United States Circuit Court of Appeals, (R. first page).

III.

Specification of Errors to be Urged.

The order and judgment of the United States District Court in and for the Southern District of Ohio, Western Division, are erroneous and unjust to the plaintiff:

FIRST: In sustaining the demurrer of the respondent to the petition of the petitioner as amended.

SECOND: In rendering judgment for the respondent upon the petition of petitioner as amended and the demurrer of defendant thereto.

THIRD: In holding and determining that the provisions of Section 602½ of the Revenue Act of 1934 which imposed a tax upon the first domestic processing of Philippine coconut oil are valid and constitutional.

FOURTH: In failing to hold and determine that the provisions of Section 602½ of the Revenue Act of 1934 relating to Philippine coconut oil, including the imposition of a tax upon the domestic processing of such Philippine oil, are invalid and unconstitutional.

FIFTH: In failing to determine and hold that said provisions of the Revenue Act of 1934 are invalid and unconstitutional for the reason that they do not fall within and are beyond the scope of the powers granted to Congress by the Constitution of the United States.

SIXTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 are invalid and unconstitutional because they constitute an unconstitutional exercise of the powers of Congress under the Constitution of the United States.

SEVENTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 are unconstitutional and invalid for the reason that they do not fall within the taxing powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof.

EIGHTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 if treated as an exercise of the taxing and appropriation powers of Congress, are an invalid and unconstitutional delegation by Congress of its legislative powers.

NINTH: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution of the United States.

TENTH: In failing to hold and determine that the exaction on the processing of Philippine coconut oil contained in said provisions of the Revenue Act of 1934 is not a true tax but is a regulation which is not within the fields of power granted by the Constitution to Congress and, in that respect, a violation of the Tenth Amendment of the Constitution of the United States.

ELEVENTH: In failing to hold and determine that, if treated as a tax and an appropriation of the proceeds thereof, said provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution of the United States.

TWELFTH: In failing to overrule the demurrer of the respondent to the petition of petitioner as amended.

IV.

Statutes and Other Material Involved.

Section 602½ - (a) and (g) of the Revenue Act of 1934, (c. 277), 48 Stat. 680, 763, U. S. C. Title 26, Sec. 999). The whole of Section 602½ is set forth in the Appendix, pages 45-48 incl. infra.

The Philippine Independence Act of March 24, 1934, (c 84 - No. 1, 48 Stat. 456, U. S. C. Title 48, Sec. 1231-1247 incl.) (Appendix 48-65 incl.)

Ordinance Appended to The Philippine Constitution, set forth on pp. 66 to 69 incl. of Appendix, infra.

V.

Statement of the Case.

The statement of the case which has been given under heading "A" of the Petition for Writ of Certiorari (supra page 2), is a sufficient statement for the purposes of this brief, and, in the interest of brevity, is not repeated here.

VI.

Summary of the Argument.*

FIRST: The levying of a tax upon and collection thereof from one group, such as soap manufacturers and other processors of Philippine coconut oil, for payment of the proceeds thereof into the Treasury of the Philippine Government does not fall within the taxing powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof, for the reasons:

(a) Even if the Phillippine Islands could be treated as part of the United States, the collection of the tax from one group in the United States for payment thereof exclusively into the Philippine Treasury would be too local a purpose to come within the meaning of the word "general" in the expression "general welfare."

(b) Even before the Philippine Independence Act, the Philippine Islands were not a part of the United States within the meaning of the revenue provisions of the United States Constitution, and the collection of the tax for pay-

*There are points included in this argument which are sometimes expressed as a contention that the exaction in question is not a true tax. For the sake of simplicity in presentation, the word tax will be used without such prefixes as "so-called" or "alleged" or without putting the word in quotation marks, as the designation of the exaction from or imposition upon the petitioner's use of Philippine coconut oil in the manufacture of soap.

ment into the Philippine Treasury would not then or at any time have fallen within the meaning of the expression "general welfare of the United States."

(c) This status of the Philippine Islands as not a part of the United States within the revenue provisions of the Constitution has been strengthened by the Philippine Independence Act and the creation of the new Government of the Philippine Commonwealth, which, while postponing complete independence for 10 years, gave to the Philippine Islands during those 10 years, a status, in domestic and constitutional law, of independent territory and government in all respects except those in which the Independence Act expressly reserved certain powers to the United States. The Philippine coconut oil provisions of the Revenue Act of 1934 could not have been and were not an exercise of any of these reserved powers.

(d) These provisions of the Revenue Act of 1934 do not provide for any revenue whatever to or for the government of the United States or for the support of the financing of the government of the United States. On the contrary, these provisions expressly exclude revenue to or for the United States as the purpose of the tax by providing that the entire proceeds of the collections shall go into the Philippine treasury. As appears from the legislative history of these provisions, the reasons for this was that in the Philippine Independence Act the United States agreed that it would not levy any tax on Philippine coconut oil up to a specified amount, and Congress, in these provisions of the 1934 Revenue Act, breached that agreement and then sought to palliate the breach by making the tax a levy and collection for the Philippine Treasury exclusively.

(e) The tax cannot be interpreted or supported as a financing of the performance by the United States Government of its reserved powers or its functions or responsibilities in or in relation to the Philippine Islands or the affairs thereof. For the proceeds of the exaction are not specified for payment for or of any activities of any officers or departments or employes or agents of the United States or for the payment of any of the expenses of any activity or responsibility of the United States in the Philippine Islands. On the contrary, the entire proceeds are required to be placed at the exclusive disposal of the government of the Philippine Commonwealth. No control over the expenditure of the money is reserved to the United States government or any of its officers, and there is no designation in the statute of the purposes for which the Philippine government may or shall expend the collections placed in its treasury. Any attempt to treat the Philippine Commonwealth as an instrument of the United States to determine the uses to which the moneys shall be put would produce a violation of the constitutional principle that Congress cannot delegate its legislative powers.

SECOND: The tax is levied and collected for the Philippine Treasury from a group of soap manufacturers and other processors for a purpose, namely, payment into the Philippine Treasury, in which said group has no interest and is in nowise a beneficiary. The tax is high and burdensome. For these reasons, as well as for the reason that they do not fall within the taxing powers granted to Congress by the Constitution, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution.

THIRD: Those provisions of Section 602½ which relate to the imposition and collection of the processing tax on Philippine coconut oil and those which provide that the collections shall be transmitted to the Philippine Treasury are inseparable. This appears from the face of the statute, and the legislative history of these provisions shows unmistakably that they are inseparable parts of one legislative purpose and that the levying and collecting provisions would not have been enacted without the provisions for transmitting the collections to the treasury of the Philippine government.

FOURTH: As appears from both the face of Section 602½ of the Revenue Act of 1934 and its legislative history, the provisions regarding Philippine coconut oil represent and were part of a plan for promoting the production volume and the prices of the intra-state production of certain domestic animal and vegetable fats and oils and for affecting the classes of oils to be used by soap manufacturers and others in the intrastate production of soap and other domestic manufacturers. For this reason also, said Philippine oil provisions of said section do not constitute a tax within the meaning of Clause 1, Section 8 of Article I of the Constitution, being neither for the raising of revenues for the support of the Government of the United States nor a regulatory measure within any regulatory field granted to Congress by the Constitution.

FIFTH: The tax cannot be justified as an import tax or as a regulation of interstate or foreign commerce, for the reasons:

(a) It is not laid on imports, nor is all coconut oil from the Philippine Islands subjected to the tax, but only that portion of the imported oil which is processed in the United States; and

(b) All commerce in the oil, whether foreign or interstate, ceases before the use of the oil, which use is the subject of the tax.

SIXTH: If the provision for transmission of the collections to the Philippine treasury were to be treated as an appropriation by Congress, then the Philippine coconut oil provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution, together with the Fifth Amendment, in that arbitrarily, without any relationship between amount and need or any specification as to the functional activities for which the money is to be expended, the entire burden of the tax is placed on one group of the population of the United States and the entire proceeds of the tax are required to be paid bodily into the Philippine Treasury.

VII.

ARGUMENT

The Philippine Coconut Oil Tax Provisions of Section 602½ of the Revenue Act of 1934 Do Not Come Within the Taxing Power Set Forth in Section 8, of Article I of the Constitution.

The tax is levied and collected upon one group in the United States, namely, soap manufacturers and other processors of Philippine coconut oil, for payment, indeed practically direct payment to another group, namely, the Treasury of the Philippine Commonwealth. Obviously this was not to pay the debts or provide for the common defense or general welfare of the United States or to provide revenues for the United States for support of the government of the United States. Not one penny of it is made available to the United States. It is therefore not laid and collected for any of the purposes specified in

Clause 1, Section 8 of Article I of the Constitution. Without other future legislation, it would be unlawful to place the proceeds of the Philippine coconut oil processing tax in the general treasury, and it would be unlawful for any department, officer, agent or employe of the United States to touch or expend one penny of those proceeds for the purposes of the United States government.

It goes without saying that statutory provisions cannot be made a constitutional exercise of the federal taxing power by the simple devise of using the word "tax" or "revenue" or by including them in a revenue act which, in its other parts, is truly a taxation and revenue statute. See *Nigro* v. *United States*, 276 U. S. 332. In *Dooley* v. *United States*, 183 U. S. 151, 157, this Court said:

> "The mere fact that the duty passes through the hands of the revenue officers of the United States is immaterial, in view of the requirement that it shall not be covered into the general fund of the Treasury, but be held as a separate fund for the government and benefit of Porto Rico."

The Revenue Act of 1934 dealt with many kinds of taxes (income, etc.) and with processing taxes upon oils other than Philippine coconut oil; but only in the case of Philippine coconut oil was there the express provision that the proceeds shall not go into the general fund of the Treasury of the United States.

(a) The Word "General" in the Expression "General Welfare" in Article I, Section 8 of the Constitution is a Limitation of the Federal Taxing Power and Excludes Taxation Exclusively for a Geographically Local Beneficiary.

This and other courts have interpreted the word "general" in the expression "general welfare" in Article I,

Section 8, Clause 1 of the Constitution, and have declared that the word "general" has a significance as a limitation upon the federal taxing power, and that one limitation created by this word "general" is that which excludes an objective which is entirely local.

See: *United States* v. *Butler*, 297 U.S. 1, 66.
Passenger Cases in 1849 (*Smith* v. *Turner*), 7 Howard, 283, 446, where this Court said:

"Nor has Congress power to lay taxes to pay the debts of a state nor to provide by taxation for its general welfare. Congress may tax for the Treasury of the Union and here its power ends."

See also: *Washington Water Power Co.* v. *City of Coeur D'Alene*, District Court of Idaho, 9 Fed. Supp. 263.
Story, Vol. 1, *Chap. XIV*, paragraph 932, which includes the passage:

"If the defense proposed by a tax be not the common defense of the United States, if the welfare be not general but special or local, as contradistinguished from national, it is not within the scope of the Constitution."

The Philippine Islands are obviously at least as local as any state. It must be remembered, and this will be elaborated somewhat later in this brief, that the tax is not for the federal government's expenditures in and for the Philippine Islands, but is collected solely and exclusively for transmission untouched and uncontrolled into the treasury of the new Philippine Commonwealth.

(b) The Philippine Islands Have Never Been a Part of the United States Within the Meaning of the Revenue Clause of the Constitution.

There is no express authority in the Constitution to levy taxes on persons or corporations in the United States for payment to the treasury of a dependency or insular possession of the United States. Prior to the passage of the Philippine Independence Act, the Philippine Islands had the status of an insular possession or dependency of the United States. That Act reduced the dependency, made an immediate enlargement of the degree or sphere of independence and provided for ultimate complete independence. This effect of the Independence Act will be discussed later; but even prior to the passage of that Act, that is during the dependency status, the courts had determined that the Philippine Islands were not a part of the United States within the revenue clauses of the Constitution.

Neuss Hesslein & Co. Inc. v. *Edwards, Collector of Internal Revenue,* 24 Fed. (2) 999, dealt with the complaint of a tax discrimination against corporations organized in the United States in favor of corporations organized under the laws of Porto Rico and the Philippine Islands, and plaintiff relied upon the provision of the Constitution which provided that

> "• • • all Duties, Imposts and Excises shall be uniform throughout the United States;"

The court held that said provisions did not apply because Porto Rico and the Philippine Islands were not part of the United States within the revenue provisions of the Constitution. This conclusion resulted from the decision of this Court in *Downes* v. *Bidwell,* 182 U.S. 244, where the question was whether a duty on articles im-

ported from Porto Rico into the United States was subject to the Constitutional requirement that duties, imposts and excises be uniform "throughout the United States." This Court held that Porto Rico and the other insular possessions ceded by Spain were not foreign countries in an international sense, but were foreign to the United States in a domestic sense because they had not been incorporated into the United States and therefore were not a part of the United States within the meaning of the revenue clauses of the Constitution; that the duty on imports from Porto Rico was not an exercise of the taxing power but an exercise by Congress of its power as the legislative body over or of the insular possessions and dependencies of the United States. Surely "United States" has identical meaning in the phrases "throughout the United States" and "of the United States" occurring in the same clause of the Constitution; and, consequently, the levy on and collection from processing and processors within the United States for the treasury of the Philippine Commonwealth cannot be sustained as an exercise of federal taxing power or the powers granted to Congress in Article I, Section 8 of the Constitution.

(c) The Philippine Independence Act, While Postponing Complete Independence, Reduced the Degree or Fields of Dependency and Increased the Degree or Fields of Independence. The Levy on Coconut Oil Processing for Payment Into the Philippine Treasury Bears no Relationship Whatever to the Financing of the Powers of the United States reserved in the Independence Act. The Tax is Levied for the Philippine Government, not for the Government of the United States, and is Consequently Outside the Constitutional Scope of the Federal Taxing Power.

We now come to the Philippine Independence Act, and to the question of the status created by that Act and its bearing on the purpose and validity of Philippine Oil provisions of the Revenue Act of 1934.

The Independence Act provided, from the time of the adoption of a Constitution by the people of the Philippines, for an immediate grant of independent powers vastly greater than the previous Philippine government had possessed. Full and complete independence was postponed for a ten-year period, but during that period (and it was during that period that the coconut oil processing tax in this case was imposed) the degree of dependency was or the fields of dependency were greatly lessened and the degree or fields of independence greatly enlarged; with the consequence that, regardless of the effect of the Independence Act as regards international relationships with other nations, or as a matter of our domestic or constitutional law, the Philippine Islands became and are less a possession of and less a dependency of the United States than before. As under the previous statutes the Philippines were held by this Court to be not within the revenue provisions of the Constitution, a fortiori impositions of taxes on United States persons and pro-

cessings for the treasury of the new Philippine Commonwealth are not within the scope of the "general welfare of the United States" in Article I, Section 8 of the Constitution after the Independence Act went into effect.

The Independence Act (set out in full in Appendix) and the Ordinance appended to the Philippine Constitution (also set out in the Appendix) contain the specifications of the powers which the United States reserved for the 10-year period, and thereby defined the powers which, as a matter of domestic or constitutional law governing in this case, the United States has retained. It may be admitted that Congress may exercise its taxing powers to finance the exercise of these reserved powers of the United States. These reserved powers will be found in the following portions of the Independence Act: Section 2 (a) (6), (9), (10), (12), (13), (14), (15); Section 6(a), (b) and (c); Section 7(1), (2), (4), (6); Section 8(3); (See Appendix hereto pages 49, 50, 54. 55, 57, 58, 59, 61); and in the following portions of the Ordinance appended to the Constitution of the Philippine Commonwealth; Section 1 (6), (9), (10), (12), (13), (15), (16), (18), (19), Section 2 (Appendix pages 66-69 incl). Section 9 of the Independence Act (Appendix 62) releases the United States from all obligations on the bonds or other obligations of the Philippines.

A levy of taxes on persons or processors within the United States for transmission of the entire proceeds to the treasury of the new Philippine Commonwealth is obviously not for the purpose of revenues for or to the United States with which to pay for the exercise by the United States of its own powers. The statute requires the transmission to the Philippine Commonwealth without the slightest condition, limitation or provision that the money shall be expended for anything which has any relationship whatever to the performance by the United

States of its powers, duties or responsibilities, in relation to the Philippines or the financing thereof. An examination of these powers reserved by the United States will be searched in vain for the discovery of any power, activity or responsibility of the United States which is to be or can be or will be financed by the putting of the money into the Philippine treasury free of any control by the United States. Indeed, any such control would be a contradiction of the very purpose of the Philippine coconut oil provisions of the Revenue Act of 1934, which was that the Philippine Commonwealth shall be the exclusive beneficiary of the moneys produced by the violation of the agreement made by the United States in the Independence Act. Those moneys were made available exclusively for the financing of the exercise by the Philippine Commonwealth of its own powers of self-government. The result is that the soap and other manufacturers within the United States are required by the statutory provisions before us to pay into the Philippine Treasury moneys with which to finance the exercise by the Philippine Commonwealth of its own powers of self-government and not for the financing of those matters for which the United States has any responsibility or over which the United States has any control or exercises any powers or has need for revenue. If the regular congressional appropriation acts are examined they will be found to provide entirely different funds to go into the United States Treasury for the financing of the functions of the United States in relation to the Philippines. In all the years before the Independence Act, the United States had never, for the operations of the Philippine government, attempted to exercise any taxing power on its own citizens. After the Independence Act, which lessened the responsibilities of the United States to the Philippine people and diminished the province of the United States in the Philip-

pines and increased the self-government of the Philippines, Congress for the first time, in this Revenue Act of 1934, attempted to impose taxes on one group of citizens of the United States for the supplying of money to the Philippine treasury upon which the United States has no power to draw for any of its own operations in or out of or concerning the Philippines.

If the purpose of Congress had been to finance the powers and responsibilities of the United States within or relating to the Philippine Islands, without any control over the expenditure or any specification or itemization of what was to be done with the money, that is, without anything in the nature of an appropriation of the money by Congress itself as distinguished from a mere direction that it be paid into the Philippine treasury, such a provision would fall afoul of the constitutional principle that Congress cannot delegate its legislative powers. The determination of the activities for which exactions are to be made and collected and the proceeds expended is a legislative province, and Congress cannot delegate that determination to the Philippine Commonwealth or to any other body.

The Philippine coconut oil provisions of the Revenue Act of 1934 were not, therefore, for the general welfare of the United States within the meaning of Clause 1 of Section 8 of Article I of the Constitution; and there is no provision in that section nor in any other clause or section of our Constitution which grants the power to enact any such provisions. They provided a very burdensome imposition upon one group of the citizenry of the United States for payment exclusively into the treasury and thereby within the unconditioned control of the government of a locality which was not even a part of the United States. As such they fall entirely outside the constitutional scope of the taxing powers of Congress.

Philippine Coconut Oil Provisions of Revenue Act of 1934 Violate the Fifth Amendment.

The provisions of Section 602½ of the Revenue Act of 1934 produce a violation of the due process of law clause of the Fifth Amendment. There have been expressions in judicial opinions to the effect that this clause is not applicable to federal tax laws. Any such statement is, however, too absolute and sweeping; and in addition to the invalidity of the purported exercise of the taxing power by reason of its being beyond the scope of that power as granted in the Constitution, its invalidity is strengthened, so to speak, by the prohibitions of the Fifth Amendment.

In *Brushaber* v. *Union P. R. Co.* 240 U. S. 1, 24, in which this Court held the due process clause to be not a limitation upon the taxing power of Congress, the opinion contained this passage:

> "• • • this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the 5th Amendment; or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion."

This quotation applies to the Philippine coconut oil tax. To pick out one group of American manufacturers for an enforced, large and burdensome contribution into the Philippine treasury is grossly and patently arbitrary. The soap manufacturers in the United States have no more interest in the state of the Philippine Treasury than any other manufacturers in or citizens of the United States.

1 *Willoughby on the Constitution*, p. 584, states:

> "Though the taking of the property in the form of a tax is thus not in itself a taking without due process, it may become such by reason of the purpose for which * * * the tax is levied, assessed and collected."

It is impossible to understand why the constitutional limitations placed, for instance, in the Fifth Amendment should apply any less to one power expressly granted to Congress than to another granted power, less to the taxing power, for instance, than to the interstate commerce power. The federal courts have often had occasion to invalidate a state taxation statute for violation of the due process of law clause of the Fourteenth Amendment, and logic and consistency would seem to lead to the conclusion that the same words in the two Amendments mean substantially the same and apply to all exercises of all legislative powers.

The Tax is not Sustainable as a Tax on Imports of Coconut Oil from the Philippine Islands, for it is not an Import Tax.

The tax is not levied upon imports of coconut oil from the Philippine Islands nor collected upon imports nor from importers. As stated in the petition and admitted by the Government's demurrer, some of the coconut oil imported from the Philippines is not processed in the United States and therefore not subject to this imposition. Not the importation but the later domestic processing of some of the imported oil is the subject of the imposition. Both the importation from the Philippine Islands and the interstate commerce in the oil are completely terminated before any processing begins.

As held in *Downes* v. *Bidwell,* 182 U. S. 244, a tax on imports from insular possessions, such as the Philippine Islands, is not an exercise of the federal taxing power but an exercise of the power to regulate the affairs of the insular possessions. Here, however, Congress did not attempt to exercise any regulatory power over the Philippines; for it imposed no import duty upon Philippine coconut oil, but made a purely domestic imposition upon a selected group of domestic manufacturers who do not import any oil from the Philippines.

The Provisions of Levying the Tax and Provisions Placing the Proceeds in the Philippine Treasury are not Separable.

In their brief in the District Court, the attorneys for the Government contended that the part of the provisions of Section 602½ of the Revenue Act of 1934 which imposed 3 cents a pound on all domestically processed Philippine coconut oil are separable from the part which placed the proceeds in the Philippine treasury, and that the Court may simply eliminate the later and sustain the former as purely and simply a levy of a tax and nothing but that. From the face of these provisions, however, it is quite obvious that the part regarding the imposition and the part regarding the collections and the payment thereof into the Philippine Treasury are so intertwined and integrally related, are so much the parts of one unitary whole, that the separation of one and the ignoring of the other part would inevitably destroy the legislative intent as expressed in the statute itself and, in the language of the opinion *Railroad Retirement Board* v. *Alton RR. Co.* 295 U. S. 330, would produce "an effect altogether different from that sought by the measure viewed as a whole."

This is corroborated by the history of these provisions, which history demonstrates beyond any doubt that Congress would not have included the tax in the Revenue Act of 1934 without attaching thereto provisions for the unconditional transmitting of the entire collections to the Philippine treasury.

As introduced and as passed by the House of Representatives, the Revenue Bill of 1934 made no distinction between the Philippine coconut oil taxes and the other processing taxes included in the bill, and provided that all collections were to be covered into the general fund of the Treasury of the United States. That was the condition of the bill when Congress enacted the Philippine Independence Act which expressly exempted annually from any import duty the first 2,000 long tons of coconut oil from the Philippines, that being approximately the then amount of annual importation. When the bill reached the Senate floor, the President of the United States and leading Senators called attention to the fact that the coconut oil provisions of the then pending Revenue bill would violate this agreement made with the Philippine people, and the letter written by the President asked that Philippine coconut oil be eliminated from the bill. (See *Congressional Record* 73 *Congress, Second Session,* Vol. 78, Part 6, p. 6317.) Thereupon the amendment was introduced which inserted into the bill the provision that the collections on Philippine coconut oil should not go into the general revenue fund of the Treasury of the United States but shall be transmitted to the Philippine treasury. The House refused to concur; the Senate insisted upon this amendment and, in the end, the House gave in and the amendment was retained. This is a brief summary of a long and intense contest. The legislative history of the bill corroborates what is apparent upon the face of the

measure and demonstrates beyond all genuine doubt that the levy of the tax and the collection of it for the Philippine treasury were parts of an integral, inseparable whole.

The purpose of an exercise o the taxing power is one of the decisive factors in the determination of the question of constitutional validity.

The test of separability is, of course, not the physical separability of the words of a statute, that being always possible. The test is whether the exaction and the purpose thereof are integral parts of a unitary legislative plan and of an integrated legislative intention; and, in the measure before us, Congress, faced with the fact that it would not levy the tax without violating the obligations which the United States had assumed in the Philippine Independence Act, met the problem by the unified, single and connected plan of exacting and collecting the money for the Philippine treasury.

The same contention of separability was advanced by the Government in the case of *United States* v. *Butler*, 297 U. S. 1, 58, and overruled by this Court in these words:

> "• • • The government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities, the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before us is not susceptible of such separation and treatment.
>
> "The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue for the support of government."

The dissenting opinion in the Butler case did not turn upon the separability of the levying and expending provisions of the statute, but upon the validity of the latter or their non-impairment of the validity of the former.

To ignore the provisions of Section 602½ of the Revenue Act of 1934 transmitting the collections on Philippine coconut oil to the Philippine treasury would be to fly in the face of the fact that there is nothing in the statute which makes any of these collections available to the United States government or any activity of the United States, but, on the contrary, the statute, in effect, expressly disposes of those collections elsewhere. The provision that transmission to the Philippine treasury shall cease if and when the Philippine Commonwealth subsidizes the producers of coconut oil cannot affect any collection made previous to such subsidy and, as yet no such subsidy has been granted. But even if one should come to be granted, there is no provision in the Revenue Act of 1934 for covering the proceeds of the tax into the United States Treasury or making it available for appropriations made by Congress, and, if any such situation should eventuate, it would take a new act of Congress to dispose of subsequent collections. When, therefore, the attorneys of the Government ask this Court to eliminate from the statute the vital provisions regarding the transmission of the collections to the Philippine treasury, it is asking this Court not only to drop words out of a statute but to insert something into the statute which is not now there, namely, that the moneys shall go into the general fund of the Treasury of the United States for expenditures under congressional appropriations. That something requires a legislative act and is, of course, not within the power of the judicial department to insert.

We cannot assume that Congress, if it should come to be faced with the necessity of determining this legislative

question, would decide in favor of the continued exaction of the tax. It is not only possible but more probable that Congress would decide in favor of terminating the tax; for, as we have seen, the tax, if treated as a tax for the United States revenue as distinguished from an enforced contribution to the Philippine treasury, would violate, without palliation, the solemn agreement of the United States made in the Philippine Independence Act. Immediately after the enactment of the Revenue Act of 1934, the President wrote to Congress asking it to repeal all the Philippine coconut oil provisions of the Act regarding Philippine coconut oil, and a bill was introduced for such repeal. At any rate, the validity of an existing statutory provision cannot turn upon assumptions concerning a future statute not yet enacted.

In *Railroad Retirement Board* v. *Alton RR. Co.*, 295 U. S. 330, 361, dealing with a statute which contained the conventional saving or separability clause, this Court said:

> "• • • The statute contains a section broadly declaring the intent that invalid provisions shall not operate to destroy the Act as a whole. Such a declaration provides a rule which may aid in determining the legislative intent, but it is not an inexorable command. • • • It has the effect of reversing the presumption which would otherwise be indulged, of an intent that unless the act operates as an entirety it shall be wholly ineffective • • • But notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole. • • • In this view we are confirmed by the petitioner's argument that as to some of the features we hold unenforcible, it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without

> them. They so affect the dominant aim of the whole statute as to carry it down with them."

To eliminate all the provisions relating to the collection of the tax for the Philippine Treasury, leaving nothing but the bare words of a levy, would constitute the legislative act of rewriting the Philippine coconut oil provisions of the Revenue Act of 1934 so as to give an effect altogether different from that sought by those provisions viewed as a whole.

As stated by this Court in *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165:

> "• • • and this presumption must be overcome by considerations that make evident the inseparability of the provisions or the clear probability that the legislature would not have been satisfield with the statute unless it had included the invalid part."

Here no guesswork is necessary. It is as certain as anything about legislation can ever possibly be that Congress refused to breach the Philippine Independence Act which it had just enacted without healing or palliating that breach by making the tax one for the Philippine Commonwealth instead of for the United States.

In *Dorphy* v. *Kansas*, 264 U. S. 286, 290, cited in the above-cited Utah Light Company case, this Court said regarding separability:

> "• • • But a provision, inherently unobjectionable, cannot be deemed separable unless it appears both that, standing alone, legal effect can be given to it, and that the legislature intended the provisions to stand, in case others included in the act and held bad should fall."

It is clear that the transmission of the collections to the Philippine Treasury was, in the mind of Congress, an

indispensible condition to the levying of the tax at all, for only in that way could the honor of the United States be saved to some extent from the disgrace of a breach of faith with the Philippine people. The effort of the Government's attorneys, as embodied in their brief below, to have the courts ignore everything except the bare imposition of the tax is tantamount to asking the courts to cause the United States to commit this breach of honor which Congress expressly sought to avoid.

It is plain that the sound and authoritative principles of separability do not permit the Philippine coconut oil provisions of Section 602½ of the Act of 1934 to be converted into a simple tax for revenue by the simple process of cutting out those of the integral portions of the section which provide where the money shall go.

The Philippine Coconut Oil Provisions of Section 602½ of the Revenue Act of 1934 Represent and are Part of a Plan for Regulating Intrastate Manufacture of Soaps and Regulating the Intrastate Production of Domestic Oils.

Why did Congress wish to impose a heavy burden upon American soap manufacturers and at the same time exclude the United States from using the proceeds? The statutory provisions contain on their face at least an indication of the answer to this question, for the provision terminating the transmission of the moneys to the Philippine Commonwealth if and when that Commonwealth grants a subsidy to Philippine coconut oil producers, plainly indicates that the purpose or objective of these provisions was the placing of Philippine coconut oil at a disadvantage as compared with competitive domestic products and thereby affect the oils used by American soap and other manufactures and the volume of oils produced in

the United States or the prices at which they could be sold or both.

This indication from the face of the statute is completely demonstrated by the legislative history of Section 602½ of the Revenue Act of 1934, which shows that the inclusion in the Act of a tax on Philippine coconut oil was at the instance of the producers of certain domestic oils, lard, cottonseed oil, tallow, soy-bean oil, fish oil and butter. This inclusion was based on the request that by this means the parity which Congress had established in the Agricultural Adjustment Act for other agricultural products might be obtained for these domestically produced oils.

See hearings *House-Committee on Ways and Means, Revenue Revision*, 1934, page 579.

Also *Congressional Record, 73rd Congress, 2nd Session*, Vol. 78, Part 3, pages 2512 and 2513; 2524; 2528 to 2532; 2535 and 2536; 2599 to 2600; 2611 to 2616; 2642; 2682; 2683; 2692 to 2702; 2770 and 2771; 2783 to 2786; 2790 to 2797; 2800 and 2801; 2804; 2809; 2890 and 2891; 2897; 2899; 2913; 2916; 2927 to 2930; 2933 and 2934; 3006 and 3008.

In the *Child Labor Case* (*Bailey* v. *Drexel Furniture Co.*) 259 U.S. 20, the statute on its face simply levied a tax whose proceeds would go into the United States Treasury; so there was not, as there is in the case at bar, express provision excluding collection of the tax as revenue for the United States government. Both in that case and in the instant case the tax was upon a part or feature of the process of manufacture; there upon the use of labor of a certain kind, here upon the use of materials of a certain kind. This Court refused to accept the congressional designation of the measure as a taxation or a revenue measure, and proceeded to analyze the nature of the objective and came to the conclusion that, despite the congressional phraseology, the measure was not a taxation

or revenue measure but a regulatory measure in a field lying outside of the federal province.

In the Child labor case this Court discussed the state bank note case, *Veazie Bank* v. *Fenno*, 8 Wall. 533, and sought to distinguish it by the fact that the statute levying the destructive tax on state bank notes did not show on its face any purpose other than revenue. That distinction is not available in the case at bar, because here the statutory provisions disclose on their face that they are not for revenue. Indeed, the Veazie case has come to be explained as dealing not with the taxing power but the power to regulate the currency. In the opinion (p. 541) this Court said:

> "There are, indeed, certain virtual limitations, arising from the principles of the Constitution itself. It would, undoubtedly, be an abuse of the power if so exercised as to impair the separable existence and independent self-government of the states, *or if exercised for ends inconsistent with the limited grants of power in the Constitution.*" (Italics ours.)

Applying this quotation, the statutory provisions now before this Court attempt to exercise the taxing power for ends inconsistent with the limited grant of power in the Constitution, for, as we have seen from earlier portion of this brief, there is no grant of power in the federal government to collect from one group of American manufacturers money for the Treasury of the Philippine Commonwealth, or as we see from the present portion of this brief, for affecting intrastate manufacturing or intra-state agricultural production.

In the Child Labor case this Court also discussed *McCray* v. *United States*, 195 U. S. 27, the oleomargerine statute case. That statute varied the rate of tax accord-

ing to the color of the oleomargerine, lending support to the contention that the law was intended to destroy the market of yellow oleomargerine. This Court held that that purpose was not readable from the face of the statute and that there was nothing on the face of the statute to indicate a purpose other than revenue. In the case at bar, the face of the statute excludes the revenue purpose.

In *United States* v. *Doremus*, 249 U. S. 86, the anti-narcotic statute was on its face a revenue act and nothing but a revenue act, together with certain provisions which the Court held to be administrative details for the collection of the tax, and, as interpreted by the court, was a simple levy of taxes on the manufacture and sale of drugs; the proceeds, like other internal revenue, to go into the Treasury for the support of the United States government. The Philippine coconut oil provisions of the 1934 Act cannot possibly be so interpreted.

Hill v. *Wallace*, 259 U. S. 44, was decided at about the same time as the Child Labor Case and dealt with a statute taxing contracts for future delivery of grain, and this was held unconstitutional because of the elaborate provisions in the act whereby the tax was lifted if certain conditions were fulfilled, which were held by this Court to demonstrate that the statute was not for revenue. The decision is authority for the unconstitutionality of the Philippine coconut oil provisions in the Act of 1934, which contain stronger proof that the tax is not for United States revenue than did the grain futures statute.

This series of cases preceding the Butler case may be said to have developed the principle that if there be nothing whatever on the face of the statute to indicate any purpose other than revenue for the United States Government, the Court will assume the purpose to be such revenue; but that if the statute indicates a different purpose,

the court will treat the statute as not a tax statute and will then pass on the constitutional issue of whether the actual purpose falls within the constitutional federal field.

The above cited decisions and opinions of this Court previous to *United States* v. *Butler*, 297 U. S. 1, invalidate the Philippine oil provisions of the Revenue Act of 1934; and obviously those provisions could not be upheld consistently with the decision in the Butler case and are invalidated by that decision; nor is there anything in the dissenting opinion in the Butler case which supports the validity of statutory provisions which on their face are not a measure for raising revenue for the United States nor a regulatory measure in a field of federal regulatory power.

Statutory provisions which constitute a plan or purpose of regulation in a field outside of the constitutional federal field falls afoul of the Tenth Amendment.

If Treated as a Tax and Appropriation Measure, the Philippine Coconut Oil Provisions of Section 602½ of the Revenue Act of 1934 Violate Clause 7 of Section 9 of Article I of the Constitution.

Clause 7 of Section 9 of Article I of the Constitution provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law". While expressed negatively, it surely includes or produces the positive duty of Congress to determine, by means of what it calls "appropriations made by law", the purposes for which the moneys in the treasury shall be expended and the amounts to be expended respectively for these purposes. This power of appropriation is a legislative power, indeed one of the most important of legislative powers, and has a most decisive influence upon the cost of government and the tax burden on those chosen to pay that cost, and

surely some exercise of legislative thought or discretion is requisite for valid action.

We do not have in the Philippine coconut oil provisions of the Revenue Act of 1934 an "appropriation" in the true sense of that word. Presumably all revenues collected for the support of the Government of the United States go into the United States Treasury as the United States Treasury and not merely as a temporary custodian for some other government or beneficiary. As, however, the Government's attorneys claim the measure to be a revenue measure and the provision for transmission to the Philippine treasury to be an appropriation from the United States Treasury, the question arises whether, even if that claim were assumed for a moment to be correct, the imposition and appropriation satisfy the constitutional requirements.

Clause 7 of Section 9 of Article I seems to have occasioned no litigations or court decisions and the contention made in this part of this brief may have some novelty. This novelty, however, may be the novelty of the provisions which we are considering; for we believe that no precedent will be found in the whole legislative history of the United States for the imposing of a heavy, and in the case of the petitioner a ruinous tax, producing from fifteen to seventeen million dollars or more a year, upon one group of the American population, numerically a small proportion of that population, and doing nothing with or about those onerous millions except to conduct them bodily into the treasury of another government.

There was, on the part of Congress, not the slightest investigation into the relationship between the amount of the taxes and the needs of the Philippine Commonwealth. Not the slightest itemizing of the uses of the money was made or thought about. No control is reserved over the uses of the money. The amount bears not the slightest

relationship to the needs, if any, for which it was raised or transmitted, nor was there the slightest thought given to any such relationship.

We contend that the provisions of Section 602½ involved in this case do not constitute a revenue and appropriation measure; but if they were to be treated as such, they represent an arbitrary action of Congress and one lacking in the slightest exercise of that minimum of thought and discretion which the Constitution requires of Congress as a taxing and appropriating body. Surely some calculation of relationship between need and expenditure is fundamental to the validity of taxation and appropriation.

If the requirement of Clause 7, Section 9, Article I of the Constitution could be satisfied by simply requiring that all of the proceeds of the particular tax, no matter what the amount, shall be paid over to the Philippine Treasury, then the same method could be applied to any and every other tax; that is, select a group which is to pay a special tax, though that group be in no respect a beneficiary of or related to the beneficiary of the proceeds, fix the measure of the burden without any relationship to the needs for which the proceeds are to be applied and then send all the proceeds, whatever the amount, to a specified official, bureau, department or other recipient. No details of appropriation would be required, no study whatever given to the needs of the particular recipient or purpose, but simply the farming out of the yield of each tax to a single designated recipient and selecting a special group of the population to bear the burden of each tax without any calculation of the relationship between the amount levied and the amount needed by the recipient. This would fail to measure up to the minimum requirements of the simplest budget system. It would be a contradiction of budgeting. Clause 7 of Section 9 of Article I surely does

not authorize such a contradiction of budgeting. That clause surely has more significance than that, especially when taken in connection with the Fifth Amendment. Some exercise of legislative discretion as to the amount needed by the particular beneficiary or purpose is surely requisite. If they could be treated as a revenue and appropriation measure, the Philippine coconut oil provisions of the Revenue Act of 1934 would fail to reach the very minimum requirements of the exercise of congressional discretion.

Concluding Summary

As the federal government is a government of limited powers, it has no non-granted power of taxation nor any other non-granted power. If, therefore, the Philippine coconut oil processing tax does not fall within the scope of the granted taxing or other power, it is, for that reason, invalid.

We have shown, we submit:

(a) It does not fall within the powers granted by Section 8 of Article I of the Constitution for it is not levied for the support of the government of the United States or the financing of any activities of the government of the United States, every penny from it being placed in the treasury of another government whose expenditure thereof is not controlled by the United States.

(b) It does not fall within Clause 1 of Section 8 of Article I, for it is not imposed for the general welfare, being simply a collection from a designated group of American manufacturers exclusively for the treasury of the Philippine Commonwealth.

(c) It is not an import duty for it is not levied upon imports or importers nor upon all imported Philippine coconut oil.

(d) It is not an exercise of the power to regulate foreign or interstate commerce, for it does not seek to nor does it regulate commerce between the Philippine Islands and points in the United States; all commerce in the oil terminates before the beginning of the processing on which the tax is imposed; and, in so far as it is regulatory, the subject matter of its regulation is intra-state manufacture and intra-state agriculture.

(e) It is not an exercise of the power to finance the exercise by the United States of any of the duties, functions or activities of the United States in or relating to the Philippine Islands, for not one penny from the tax is authorized, allowed, directed or required to be used for any such purpose.

(f) It is not an exercise of any power which the United States may still possess to regulate the Philippine Islands, for the tax is imposed exclusively on processing and processors within the United States.

In short, it is not an exercise of any power which the Constitution has granted to Congress.

It is, therefore, respectively submitted that this case is one calling for the exercise by this Court of its supervisory powers, and that to such an end a writ of certiorari should be granted and this Court should review the decision of the United States District Court in and for the Southern District of Ohio and finally reverse the same.

Alfred Bettman,

Counsel for Petitioner.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680, 763:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal [23] oil, or sunflower oil, or any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture, (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials pur-

[23] So in original.

chased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such maner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon

the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by Section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in sub-section (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States (U. S. C., Title 26, Sec. 999).

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

Convention to Frame Constitution for Philippine Islands.

Section 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft *a constitution for the government* of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, *which shall exercise jurisdiction over* all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS.

SEC. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippine Islands and the United States shall be upon the basis prescribed in Section 6.

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and

instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government.

(8) Provision shall be made for the establishment and maintenance of an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the Legislature of the Commonwealth of the Philippine Islands shall be reported to the Congress of the United States.

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of Section 7.

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

(15) The authority of the United States High Commissioner to the government of the Commonwealth of the

Philippine Islands, as provided in this Act, shall be recognized.

(16) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof.

(b) The constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution.

(3) That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will make adequate provision for the

necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

Submission of Constitution to the President of the United States.

Sec. 3. Upon the drafting and approval of the constitution by the constitutional convention in the Philippine Islands, the constitution shall be submitted within two years after the enactment of this Act to the President of the United States, who shall determine whether or not it conforms with the provisions of this Act. If the President finds that the proposed constitution conforms substantially with the provisions of this Act he shall so certify to the Governor General of the Philippine Islands, who shall so advise the constitutional convention. If the President finds that the constitution does not conform with the provisions of this Act he shall so advise the Governor General of the Philippine Islands, stating wherein in his judgment the constitution does not so conform and submitting provisions which will in his judgment make the constitution so conform. The Governor General shall in turn submit such message to the constitutional convention for further action by them pursuant to the same procedure hereinbefore defined, until the President and the constitutional convention are in agreement.

SUBMISSION OF CONSTITUTION TO FILIPINO PEOPLE.

Sec. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine Independence, and the Governor General shall, within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution. The election shall take place not earlier than three months nor later than six months after the proclamation by the Governor General ordering such election. When the election of the officers provided for under the constitution has been held and the results determined, the Governor General of the Philippine Islands shall certify the results of the election to the President of the United States, who shall thereupon issue a proclamation announcing the results of the election, and upon the issuance of such

proclamation by the President the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers, and duties, as provided under the constitution. The present government of the Philippine Islands shall provide for the orderly transfer of the functions of government.

If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.

TRANSFER OF PROPERTY AND RIGHTS TO PHILIPPINE COMMONWEALTH.

Sec. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE.

Sec. 6. After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law, subject to the following exceptions:

(a) There shall be levied, collected, and paid on all refined sugars in excess of fifty thousand long tons, and on

unrefined sugars in excess of eight hundred thousand long tons, coming into the United States from the Philippine Islands in any calendar year, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(b) There shall be levied, collected, and paid on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of two hundred thousand long tons, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(c) There shall be levied, collected, and paid on all yarn, twine, cord, cordage, rope and cable, tarred or untarred, wholly or in chief value of manila (abaca) or other hard fibers, coming into the United States from the Philippine Islands in any calendar year in excess of a collective total of three million pounds of all such articles hereinbefore enumerated, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(d) In the event that in any year the limit in the case of any article which may be exported to the United States free of duty shall be reached by the Philippine Islands, the amount or quantity of such articles produced or manufactured in the Philippine Islands thereafter that may be so exported to the United States free of duty shall be allocated, under export permits issued by the government of the Commonwealth of the Philippine Islands, to the producers or manufacturers of such articles proportionately on the basis of their exportation to the United States in the preceding year; except that in the case of unrefined

sugar the amount thereof to be exported annually to the United States free of duty shall be allocated to the sugar-producing mills of the islands proportionately on the basis of their average annual production for the calendar years 1931, 1932, and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the mill and the planters on the basis of the proportion of sugar to which the mill and the planters are respectively entitled. The government of the Philippine Islands is authorized to adopt the necessary laws and regulations for putting into effect the allocation hereinbefore provided.

(e) The government of the Commonwealth of the Philippine Islands shall impose and collect an export tax on all articles that may be exported to the United States from the Philippine Islands free of duty under the provisions of existing law as modified by the foregoing provisions of this section, including the articles enumerated in subdivisions (a), (b), and (c), within the limitations therein specified, as follows:

(1) During the sixth year after the inauguration of the new government the export tax shall be 5 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(2) During the seventh year after the inauguration of the new government the export tax shall be 10 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(3) During the eighth year after the inauguration of the new government the export tax shall be 15 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(4) During the ninth year after the inauguration of the new government the export tax shall be 20 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries.

(5) After the expiration of the ninth year after the inauguration of the new government the export tax shall be 25 per centum of the rates of duty which are required by the laws of the United States to be levied, collected and paid on like articles imported from foreign countries;

The government of the Commonwealth of the Philippine Islands shall place all funds received from such export taxes in a sinking fund, and such funds shall, in addition to other moneys available for that purpose, be applied solely to the payment of the principal and interest on the bonded indebtedness of the Philippine Islands, its Provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged.

When used in this section in a geographical sense, the term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and the islands of Guam.

Sec. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds or which seems likely to impair the reserves for the protection of the currency of the Philippine Islands or which in his judgment will violate international obligations of the United States.

(3) The Chief Executive of the Commonwealth of the Philippine Islands shall make an annual report to the President and Congress of the United States of the proceedings and operations of the government of the Commonwealth of the Philippine Islands and shall make such other reports as the President or Congress may request.

(4) The President shall appoint by and with the advice and consent of the Senate a United States High Commissioner to the government of the Commonwealth of the Philippine Islands who shall hold office at the pleasure of the President and until his successor is appointed and qualified. He shall be known as the United States High Commissioner to the Philippine Islands. He shall be the representative of the President of the United States in the Philippine Islands and shall be recognized as such by the government of the Commonwealth of the Philippine Islands, by the commanding officers of the military forces of the United States, and by all civil officials of the United States in the Philippine Islands. He shall have access to all records of the government or any subdivision thereof, and shall be furnished by the Chief Executive of the Commonwealth of the Philippine Islands with such information as he shall request.

If the government of the Commonwealth of the Philippine Islands fails to pay any of its bonded or other indebtedness or the interest thereon when due or to fulfill any of its contracts, the United States High Commissioner shall immediately report the facts to the President, who may thereupon direct the High Commissioner to take over the customs offices and administration of the same, administer the same, and apply such part of the revenue received therefrom as may be necessary for the payment of such overdue indebtedness or for the fulfillment of such contracts. The United States High Commissioner shall annually, and at such other times as the President may require, render an official report to the President and Congress of the United States. He shall perform such additional duties and functions as may be delegated to him from time to time by the President under the provisions of this Act.

The United States High Commissioner shall receive the same compensation as is now received by the Governor General of the Philippine Islands, and shall have such staff and assistants as the President may deem advisable and as may be appropriated for by Congress, including a financial expert, who shall receive for submission to the High Commissioner a duplicate copy of the reports of the insular auditor. Appeals from decisions of the insular auditor may be taken to the President of the United States. The salaries and expenses of the High Commissioner and his staff and assistants shall be paid by the United States.

The first United States High Commissioner appointed under this Act shall take office upon the inauguration of the new government of the Commonwealth of the Philippine Islands.

(5) The government of the Commonwealth of the Philippine Islands shall provide for the selection of a Resident

Commissioner to the United States, and shall fix his term of office. He shall be the representative of the government of the Commonwealth of the Philippine Islands and shall be entitled to official recognition as such by all departments upon presentation to the President of credentials signed by the Chief Executive of said government. He shall have a seat in the House of Representatives of the United States, with the right of debate, but without the right of voting. His salary and expenses shall be fixed and paid by the government of the Philippine Islands. Until a Resident Commissioner is selected and qualified under this section, existing law governing the appointment of Resident Commissioners from the Philippine Islands shall continue in effect.

(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

Sec. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. This paragraph shall not apply to a person coming or seeking to come to the Territory of Hawaii who does not apply for and secure an immigration

or passport visa, but such immigration shall be determined by the Department of the Interior on the basis of the needs of industries in the Territory of Hawaii.

(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such Territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such Territory under an immigration visa. The Secretary of Labor shall by regulations provide a method for such exclusion and for the admission of such excepted classes.

(3) Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, for such period as may be necessary and, under such regulations as the Secretary of State may prescribe, during which assignment such officer shall be considered as stationed in a foreign country; but his powers and duties shall be confined to the performance of such of the official acts and notarial and other services, which such officer might properly perform in respect of the administration of the immigration laws if assigned to a foreign country as a consular officer, as may be authorized by the Secretary of State.

(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws not inapplicable, shall

apply to and be enforced in connection with the provisions of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provision of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

Sec. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: Provided, That such bonds and obligations hereafter issued shall not be exempt from taxation in the United States or by authority of the United States.

RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY.

Sec. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philip-

pines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands, not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

NEUTRALIZATION OF PHILIPPINE ISLANDS.

Sec. 11. The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

NOTIFICATION TO FOREIGN GOVERNMENTS.

Sec. 12. Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

TARIFF DUTIES AFTER INDEPENDENCE.

Sec. 13. After the Philippine Islands have become a free and independent nation there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from other foreign countries: Provided, That at least one year prior to the date fixed in this Act for the independence of the Philippine Islands, there shall be held a conference of representatives of the Government of the United States and the government of the Commonwealth of the Philippine Islands, such representatives to be appointed by the President of the United States and the Chief Executive of the Commonwealth of the Philippine Islands, respectively, for the purpose of formulating recommendations as to future trade relations between the Government of the United States and the independent government of the Philippine Islands, the time, place, and manner of holding such conference to be determined by the President of the United States; but nothing in this proviso shall be construed to modify or affect in any way any provision of this Act relating to the procedure leading up to Philippine independence or the date upon which the Philippine Islands shall become independent.

IMMIGRATION AFTER INDEPENDENCE.

Sec. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

CERTAIN STATUTES CONTINUED IN FORCE.

Sec. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States, and all references in such laws to the government or officials of the Philippines or Philippine Islands shall be construed, insofar as applicable, to refer to the government and corresponding officials respectively of the Commonwealth of the Philippine Islands. The government of the Commonwealth of the Phillipine Islands shall be deemed successor to the present government of the Philippine Islands and of all the rights and obligations thereof. Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

Sec. 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE.

Sec. 17. The foregoing provisions of this Act shall not take effect until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question as may be provided by the Philippine Legislature.

Approved, March 24, 1934.

ORDINANCE APPENDED TO THE CONSTITUTION OF THE PHILIPPINE COMMONWEALTH.

Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every office of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and

subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippine recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth

of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Act of Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approved the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of the Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

Sec. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a Resident Commissioner of the Philippines to the United States who shall be appointed by the President of the Commonwealth of the Phil-

ippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One Hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications, compensation, and expenses of the Resident Commissioner shall be fixed by law.

Sec. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936

No. 659

THE CINCINNATI SOAP COMPANY, a corporation,
Petitioner,

v.

THE UNITED STATES OF AMERICA,
Respondent.

BRIEF OF PETITIONER

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Respondent.

BRIEF OF PETITIONER

This case is before this Court on certiorari to the United States Circuit Court of Appeals for the Sixth Circuit. The action was brought in the United States District Court for the Southern District of Ohio, Western Division, and submitted to that court on the respondent's demurrer to petitioner's petition in that court. The demurrer was sustained and judgment entered for the defendant (respondent) (R. 22). Appeal was taken to said Circuit Court of Appeals and, while pending therein, petition for writ of certiorari was filed in this Court and was granted.

OPINION BELOW

The said District Court wrote a short memorandum entitled "Decision on Demurrer" (R. 23), in which the court simply stated that, as the parties had requested that the case be expedited, it was not writing an opinion, that it had read and thoroughly considered the briefs and arguments and found the demurrer well taken upon the ground set forth in the demurrer, namely, that the tax was assessed and collected under valid and constitutional laws of the United States.

STATEMENT OF THE CASE

The sole question in this case is the constitutionality of those provisions of Section 602½ of the Revenue Act of 1934 which relate to the processing tax on Philippine coconut oil. The action was brought for a refund of $995.85 paid on the use by the petitioner of Philippine coconut oil in the manufacture of soap. The Government demurred to the petition, thus eliminating issues of fact. The District Court sustained the demurrer and, petitioner not asking to plead further, rendered judgment for the defendant, the United States of America, respondent herein.

The said provisions of Section 602½ of the Revenue Act of 1934 are as follows:

> Section 602½—
>
> "(a) There is hereby imposed upon the first domestic processing of coconut oil . . . or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. . . . All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine

growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purpose of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed. . . ."

. . . . . .

"(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

(Section 602½ is set out in full in the Appendix, infra, page 1.)

For abbreviation, the expression "Philippine coconut oil," as used in this brief, means, in the language of the statute, coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, including, any combination or mixture containing a substantial quantity of such coconut oil with respect to which there has been no previous first domestic processing. The Bureau of Internal Revenue, in the regulations promulgated under the authority of the Act, has defined "substantial quantity" as 10 per cent or more. (*U. S. Treasury Department, Bureau of Internal Revenue, Regulations 48 Relating to Processing Tax on Certain Oils under Section 602½ of the Revenue Act of 1934.*)

The Revenue Act of 1934 contains provisions regarding income taxes, estate taxes, various excise taxes, capital stock and excess-profits taxes and many other provisions relating to taxes other than the oil taxes; also, in Section 602 contains provisions for tariff duty on certain oils, such

as whale oil, fish oil, etc. Section 602½ deals with processing taxes on certain oils, including many oils other than Philippine coconut oil. This case is concerned exclusively with the provisions of Section 602½ relating to Philippine coconut oil.

Amongst the contentions advanced in this brief, there may be some which are often expressed as contentions that the statutory exaction in question is not a true tax or that under the guise of a tax Congress sought to exercise a power other than its constitutional taxing power. For the sake of simplicity in presentation, the word "tax" will be used in this brief without such prefixes as "so-called" or "alleged" or without putting the word tax in quotation marks or the like. The word "tax" will be used to mean the $995.85 which the statute required petitioner to pay and for the refund of which this action has been brought or similar impositions upon petitioner or other processors of Philippine coconut oil, without, of course, any acknowledgment or implication that the same was within the scope of or a valid exercise of the taxing power; the word tax, as used in this brief, implying neither more nor less than that the statute did impose the payment and designated the imposition a processing tax.

The facts and allegations of the petition may be summarized as follows:

The petitioner, The Cincinnati Soap Company, was a corporation engaged in the manufacture of soap, with office in Cincinnati, Ohio, and manufacturing plant at Dayton, Ohio; so that its manufacturing or processing was exclusively within Ohio and intrastate. Philippine coconut oil was an essential ingredient of a large proportion of the soaps manufactured and sold by it, for which there was no substitute in the manufacture of said large proportion of its soaps (R. 3). Philippine coconut oil is used by many soap manufacturers in the United States as well as by

other processors. The oil is not imported by the soap manufacturers or processors, but is shipped from the Philippine Islands to ports on the Atlantic and Pacific Oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded and delivered to such dealers at the ports of entry, and, when so delivered, the importation of the oil and the transportation thereof from the Philippine Islands to the United States terminates. As they receive orders from their customers, the dealers place and ship the oil in railroad tank cars consigned to the plants or warehouses of the soap manufacturers or other customers, who unload the tank cars and place the oil in their own storage tanks or other receptacles located in their own respective manufacturing plants; so that the interstate transportation or commerce in the oil terminates before any processing of the oil does or can commence. All this was true of the oil on the use of which petitioner paid the sum for the refund of which this case was brought. That oil had been purchased from two dealers, one located on the Atlantic coast at Edgewater, New Jersey, and one on the Pacific Coast at West Berkeley, California, and the oil was received by petitioner at Dayton, Ohio, in tank cars into which it had been placed by said dealers. At Dayton the oil was unloaded and placed in petitioner's own storage tanks from which it was drawn from time to time for use in the process of manufacturing soap. None of the oil was imported by petitioner from the Philippine Islands or from any grower or dealer located in the Philippine Islands (R. 3-4).

Philippine coconut oil imported into the United States is not all domestically processed, that is, some of it is marketed and used in the United States without any domestic processing which would subject it to the tax provided in Section 602½ of the Revenue Act of 1934 (R. 4).

Petitioner was unable to recover the amounts imposed upon it by said Section 602½ by increasing the prices at which it sold its soaps; for the competitive conditions of the soap market were such that if petitioner undertook to increase the prices of its soaps to the extent represented by the processing tax, it would have been unable to sell its soaps. The added cost of coconut oil resulting from the processing tax imposed by the statute constituted about 30% of the total manufacturing cost of petitioner's coconut oil soaps, and the effect of this processing tax was such as to make it impossible for petitioner to continue to conduct its business at a profit and subjected that business to an operating loss, although up to the time of the imposition of this processing tax petitioner had been able to conduct its business at a profit. This conversion of petitioner's business from one in which a profit could be made into one in which no profit can be made resulted from the imposition of the tax on the processing of Philippine coconut oil (R. 4-5).

The legal status of the Philippine Islands is involved in some of the constitutional issues in this case, including the effect upon that status of the Philippine Independence Act (*Act of March 24, 1934, C. 84, 48 Stat. U. S. C. Title 48, Sections 1231 to 1247, incl.*). That Act was enacted about forty-seven (47) days previous to the enactment of the Revenue Act of 1934, was accepted by the Philippine legislature on May 1, 1934 (about nine days before the enactment of the Revenue Act of 1934) and was in full force and effect at the time of the levy or collection of any processing tax under Section 602½ of the Revenue Act, including petitioner's said $995.85. The Independence Act provided for the creation of a new government for the Philippine Islands to be known as the Government of the Commonwealth of the Philippines. It provided for a grant of complete independence at the end of a 10-year period. Pur-

suant to the Act, a Philippine constitutional convention was called, and on February 8, 1935, that convention adopted a Constitution of the Philippines. On March 23, 1935, this Constitution was approved by the President of the United States as substantially in conformity with the Act of March 24, 1934, and, on May 14, 1935, the Constitution was approved and adopted by the people of the Philippines; and by virtue of a proclamation of the President of the United States, the new government of Commonwealth of the Philippines was inaugurated on November 15, 1935. (The aforesaid steps in the legislation for and organization of the new Philippine government will be found in *House Document No. 400, 74th Congress, 2d Session, pp. 1, 5-24, 30, 73.* A full copy of the Philippine Independence Act will be found in the Appendix, infra, p. 16.)

The bearing of these facts concerning the Philippine Independence Act and Commonwealth will be discussed in the course of the argument, and references will be made to relevant facts and data contained in various congressional and other public documents and reports and which can be more clearly and conveniently presented in the course of the argument, as compared with setting them forth in this statement of facts.

The Philippine government has never by any law provided for any subsidy to the producers of copra, coconut oil or allied products. (Copra is the solid meat of the coconut from which coconut oil is pressed or milled.)

At this place in the brief, a brief outline of the legislative history of the Revenue Act of 1934 and its chronological relationship with the Independence Act might be helpful in its bearing on the meaning of the Philippine provisions of the Revenue Act.

As introduced in Congress and reported out by the Ways and Means Committee of the House, the Revenue Bill of 1934 provided for a processing tax upon a number of differ-

ent kinds of oil, including coconut oil, but without any special provisions regarding Philippine coconut oil. These oil processing taxes were placed in the bill at the behest of domestic producers of other vegetable and animal fats and oils, such as lard, tallow, butter, soy-bean oil, cotton-seed oil and others. After the revenue bill in its then shape and containing no Philippine oil provisions had passed the House and was pending in the Senate, Congress passed the Philippine Independence Act and it had been accepted by the Philippine legislature. That Act exempted from tariff duties a designated quantity of coconut oil imported from the Philippines. Thereupon, while the revenue bill was still pending in the Senate, the President of the United States and several Senators called to the attention of the Senate that the coconut oil provisions of the pending revenue bill would constitute, in spirit and effect, a violation of the agreement and a breach of the faith which the United States had made with the Philippine people and embodied in the Independence Act, and asked for the elimination of coconut oil from the bill. (The President's letter will be found infra, p. 73.) Out of the debates and actions which followed there ensued the insertion into the bill of the aforesaid special provisions regarding Philippine coconut oil, which provide that the proceeds of the processing tax on Philippine coconut oil shall not be covered into the general fund of the Treasury of the United States but shall be held as a separate fund and paid to the Treasury of the Philippine Islands, and that if at any time the Philippine Government provides for any subsidy to the producers of copra, coconut oil or allied products, no further payments to the Philippine Treasury shall be made.

The parts of the petition numbered IX to XX (R. 6-10) set forth the various grounds in support of the contention of the unconstitutionality of the Philippine coconut oil provisions of the Revenue Act of 1934. As these contentions

on the constitutional issue are summarized in the Summary of the Argument (infra, p. 10), no summary of these portions of the petition is necessary at this place.

SPECIFICATION OF ERRORS TO BE URGED

The order and judgment of the United States District Court in and for the Southern District of Ohio, Western Division, are erroneous and unjust to the plaintiff:

First: In sustaining the demurrer of the respondent to the petition of the petitioner as amended.

Second: In rendering judgment for the respondent upon the petition of petitioner as amended and the demurrer of respondent thereto.

Third: In holding and determining that the provisions of Section 602½ of the Revenue Act of 1934 which imposed a tax upon the first domestic processing of Philippine coconut oil are valid and constitutional.

Fourth: In failing to hold and determine that the provisions of Section 602½ of the Revenue Act of 1934 relating to Philippine coconut oil, including the imposition of a tax upon the domestic processing of such Philippine oil, are invalid and unconstitutional.

Fifth: In failing to determine and hold that said provisions of the Revenue Act of 1934 are invalid and unconstitutional for the reason that they do not fall within and are beyond the scope of the powers granted to Congress by the Constitution of the United States.

Sixth: In failing to hold and determine that said provisions of the Revenue Act of 1934 are invalid and unconstitutional because they constitute an unconstitutional exercise of the powers of Congress under the Constitution of the United States.

Seventh: In failing to hold and determine that said provisions of the Revenue Act of 1934 are unconstitutional and invalid for the reason that they do not fall within the taxing

powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof.

Eighth: In failing to hold and determine that said provisions of the Revenue Act of 1934, if claimed to be treated as an exercise of the taxing and appropriation powers of Congress, are an invalid and unconstitutional delegation by Congress of its legislative powers.

Ninth: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution of the United States.

Tenth: In failing to hold and determine that the exaction on the processing of Philippine coconut oil contained in said provisions of the Revenue Act of 1934 is not a true tax but is a regulation which is not within the fields of power granted by the Constitution to Congress and, in that respect, a violation of the Tenth Amendment of the Constitution of the United States.

Eleventh: In failing to hold and determine that said provisions of the Revenue Act of 1934 violate Clause 7 of Section 9 of Article I of the Constitution of the United States, taken in connection with the Fifth Amendment and Clause 1 of Section 8 of Article I of the Constitution.

Twelfth: In failing to overrule the demurrer of the respondent to the petition of petitioner as amended.

SUMMARY OF THE ARGUMENT

First: The levying of a tax upon and collection thereof from one group, such as soap manufacturers and other processors of Philippine coconut oil, for payment of the proceeds thereof into the Treasury of the Philippine Government does not fall within the taxing powers of Congress granted by the Constitution of the United States in Clause 1 of Section 8 of Article I thereof, for the reasons:

(a) Even if the Philippine Islands could be treated as part of the United States, the collection of the tax

from one group in the United States for payment thereof exclusively into the Philippine Treasury would be too local a purpose to come within the meaning of the word "general" in the expression "general welfare."

(b) The Philippine Islands have never been a part of "the United States" within the meaning of the revenue provisions of the Constitution, and the collection of the tax for payment into the Philippine treasury is therefore a purpose not within the meaning of the expression "general welfare of the United States." If the Philippines could be treated as a part "of the United States," then the Philippine coconut oil provisions of the Revenue Act of 1934 would violate the uniformity requirement.

(c) This status of the Philippine Islands as not a part of the United States within the revenue provisions of the Constitution was strengthened by the Philippine Independence Act, followed by the creation of the new Government of the Philippine Commonwealth, which Act, while postponing complete independence for 10 years, strengthened during those 10 years the status of the Philippine Islands in domestic and constitutional law, as independent territory and government in all respects except those in which the Independence Act expressly reserved certain powers to the United States.

(d) These provisions of the Revenue Act of 1934 do not provide for any revenue whatever to or for the government of the United States or for the support of, or the financing of the government of the United States. On the contrary, these provisions expressly exclude revenue to or for the United States as the purpose of the tax, by providing that the entire proceeds of the collections shall go into the Philippine treasury. As appears from the legislative history of these provisions, the reason for this exclusion was that in the Philippine Independence Act the United States had specified the amount of Philippine coconut oil which would be free of duty, and these provisions of the Revenue Act of 1934 would constitute a violation of the

spirit or intention, violate understandings which had been reached between the United States and the Philippine people and which were embodied in the Independence Act, and Congress then sought to palliate this breach of faith by making the tax a levy and collection for the Philippine government exclusively.

(e) The Philippine coconut oil provisions of the Revenue Act of 1934, which levied a tax on a purely domestic processing, could not have been and were not for the financing of any of the powers reserved to the United States in the statutes, including the Independence Act, which established the status of the Philippine Islands, nor for the financing of the performance by the United States Government of any of its functions or responsibilities in or in relation to the Philippine Islands or the affairs thereof. The proceeds of the exaction are not specified for payment for or of any activities of any officers or departments or employes or agents of the United States or for the payment of any of the expenses of any activity or responsibility of the United States in the Philippine Islands. On the contrary, the entire proceeds are required to be placed at the exclusive disposal of the Government of the Philippine Commonwealth. No control over the expenditure of the money is reserved to the United States government or any of its officers, and there is no designation in the statute of the purposes for which the Philippine government may or shall expend the collections placed in its treasury. Any attempt to treat the Philippine Commonwealth as an instrument of the United States to determine the uses to which the moneys shall be put would produce a violation of the constitutional principle that Congress cannot delegate its legislative powers.

Second: The tax is levied and collected for the Philippine treasury from a group of soap manufacturers and other processors for a purpose, namely, payment into the Philippine treasury, in which treasury said group has no interest and of which said group is not a beneficiary. The

tax is high and burdensome. For these reasons, as well as for the reason that they do not fall within the taxing powers granted to Congress by the Constitution, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 violate the Fifth Amendment of the Constitution.

Third: These provisions of Section 602½ which relate to the imposition and collection of the processing tax on Philippine coconut oil and those which provide that the collections shall be transmitted to the Philippine Treasury are inseparable; indeed cannot be separated without completely changing the character, meaning, purpose and effect of the taxing, as well as all other parts of the provisions relating to Philippine coconut oil. This appears from the face of the statute, and the legislative history of these provisions shows unmistakably that they are inseparable parts of one legislative purpose and that the levying and collecting provisions would not have been enacted without the provisions for transmitting the collections to the treasury of the Philippine government.

Fourth: As appears from both the face of Section 602½ of the Revenue Act of 1934 and its legislative history, the provisions regarding Philippine coconut oil represent and were part of a plan for promoting the raising of the prices of and affecting the production volume of certain domestic animal and vegetable fats and oils the production of which is exclusively intrastate, and for affecting the classes of oils to be used by domestic manufacturers in the intrastate production of soap and other domestic articles. For this reason also, said Philippine oil provisions of said section do not constitute a tax within the meaning of Clause 1, Section 8 of Article I of the Constitution, being neither for the raising of revenues for the support of the Government of the United States nor a regulatory measure within any regulatory field granted to Congress by the Constitution.

Fifth: The tax cannot be sustained as an import tax nor as a regulation of interstate or foreign or Philippine commerce, for the reasons:

(a) It is laid upon "domestic processing," that is, upon intra-United States transactions, and it is not laid on imports; nor is all coconut oil from the Philippine Islands subjected to the tax, but only that portion of the imported oil which is processed in the United States; and

(b) All commerce in the oil, whether foreign or interstate, ceases before the use of the oil, which use is the subject of the tax and which use is completely intrastate.

Sixth: The Philippine coconut oil provisions of the Revenue Act of 1934, in directing that the entire proceeds shall not be covered into the general treasury but shall be transmitted to the Philippine treasury, constitute a violation of Clause 7 of Section 9 of Article I of the Constitution, especially when taken in combination with Clause 1 of Section 8 of Article I of the Constitution, and the Fifth Amendment, in that (a) if such direction were to be treated as an appropriation, then arbitrarily, without any relationship between the amount collected and the needs of the beneficiary or any specification as to or control of the functional activities for which the money is to be expended, the entire proceeds, whatever amount they may turn out to be, are transmitted to the Philippine treasury; (b) the entire burden of this contribution to the Philippine treasury is placed on a group of the population of the United States unrelated to that treasury; and (c) the Constitution intends that the proceeds of a general tax (as distinguished from special assessments or contributions in such matters as a drainage district or analogous enterprises where the costs are allocated amongst the direct beneficiaries) shall go into the general treasury and be drawn therefrom under and in accordance with congressional appropriations.

ARGUMENT

I.

Provisions of Section 602½ of the Revenue Act of 1934 Relating to Philippine Coconut Oil Do Not Come Within the Constitutional Scope of the Taxing Power of Congress as Set Forth in Section 8 of Article I of the Constitution of the United States.

Article I, Section 8, Clause 1 of the Constitution of the United States provides:

> "Section 8. The Congress shall have Power to Lay and Collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States."

This clause of the Constitution is not merely a grant of taxing power but also a limitation of taxing power, and unless an attempted exercise of the taxing power comes within the provisions of the clause, it is necessarily invalid because beyond the constitutional scope of the grant of federal taxing power.

The sub-sections of Section 602½ of the Revenue Act of 1934 involved in this case (omitting those portions which are not relevant here, and also omitting, for simplicity and convenience of presentation, the references to combinations or mixtures of coconut oil with other materials, which combinations or mixtures will be considered as falling within the words "coconut oil") provide:

> Section 602½.
>
> (a) There is hereby imposed upon the first domestic processing of coconut oil . . . a tax of 3 cents per pound, to be paid by the processor. . . . All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall

be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this sub-section. For the purpose of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

. . . . . .

"(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

It is to be noted that not one penny of the proceeds of the tax is permitted to be drawn out by or paid to any officer, department or employe of the United States. Nor may the Treasurer of the United States keep any of those proceeds, for unless he turns them over to the treasury of the Philippine Commonwealth, he would be violating these statutory provisions. In short, there is only one thing permitted to be done with the money, that is, transmit it to the treasury of the Philippine Commonwealth. The revenue collectors and the United States Treasurer are but conduits from the pockets of the processors to the treasury of the Philippine Islands. Plainly, therefore, the tax is levied for the treasury of the Philippine Islands exclusively and collected exclusively for that treasury.

We are, therefore, here concerned with a tax to be levied upon and collected from one group, namely, soap manufacturers and other processors of Philippine coconut oil in the United States, for payment, indeed in effect direct payment, to another group, namely, the treasury of the

Philippine Commonwealth and the persons in the Philippine Islands to or for whom the Philippine Commonwealth determines to expend the moneys. We contend that the tax on Philippine coconut oil imposed by section 602½ of the Revenue Act of 1934 was not laid to pay the debts or provide for the common defense and general welfare of the United States. It was not laid to provide revenues of or for the United States or for the support of the government of the United States. It was not, therefore, laid for the purposes specified in Section 8 of Article I of the Constitution. It cannot be upheld as an exercise of any taxing power granted to Congress in the Constitution.

In their brief below, the Government's attorneys stressed that the Act of 1934 is on its face a revenue measure with all the features ordinarily characteristic of revenue acts. This may be true of the other parts of the Revenue Act of 1934, with which this instant case is in nowise concerned; but it is completely untrue of those provisions of the said Act with which this case is concerned, namely, the provisions relating to the exaction on the use of Philippine coconut oil in domestic manufacture. In the case of every other tax levied in the Act, the proceeds are placed in the general fund of the Treasury for such congressional appropriations therefrom as Congress may come to make; and this is also true of every oil processing tax provided for in Section 602½ of the Act with the sole and outstanding exception of the provisions on the Philippine coconut oil processing tax. Those provisions on their face are not a revenue measure; quite the contrary. They not only do not provide for revenue to or for the United States, they exclude the collection of any revenue for the United States. They raise money, it is true, but certainly no argument or citations are needed for the proposition that by revenue, when we are talking of an exercise of the federal taxing power, we mean revenue of or for the United States.

Without other and different legislation by some future Congress, it would be unlawful to place the proceeds of the Philippine coconut oil processing tax in the general fund of the treasury; and it would be unlawful for any officer, department or employe of the United States to draw out or expend one penny of those proceeds for the purposes of the United States Government or any other purpose, and it would be unlawful for the Treasurer of the United States to do anything whatever to those proceeds excepting only to transmit them to the treasury of the Philippine Commonwealth.

United States v. *Norton*, 91 U. S. 566, was concerned with the question whether the Money Order Act was a revenue measure. That Act provided for the issuance of money orders by the Post Office Department, and permitted the compensation of services of members of the Post Office Department in the issuance and sale of money orders to be paid out of the receipts from the sales. This court adopted as the definition of "revenue" the one given by Webster: "The income of a nation, derived from its taxes, duties or other sources, for the payment of the national expenses." The receipts of the Post Office Department, above and outside of said expenses paid therefrom was held to be income from "other sources." Mr. Justice Story's definition of "revenue laws" in *United States* v. *Mayo*, 1 Gall., 306, was such laws "as are made for the direct and avowed purpose of creating revenue or public funds for the service of the Government" was approved; and the statement was made that this same doctrine was reaffirmed in *United States* v. *Cushman*, 2 Sumn. 426.

In *State* v. *Gordon*, 266 Mo. 394, mandamus was brought by the state superintendent of public schools to compel the state auditor to pay a certain sum for use by public schools, and the question was whether certain receipts derived from miscellaneous sources, such as interest on

state deposits, fees earned by several state officers, receipts from various miscellaneous fees, fell within the statutory expression "ordinary revenues." The court said the question turned on the meaning of the two words "ordinary revenues," and proceeded to quote definitions of "revenues" from various dictionaries and from two decisions of this Court, one of them *United States* v. *Bromley*, 53 U. S. 88, in which occurs the passage "Revenue is the income of a state." The Missouri court decided that the word "revenue" is broader than and includes taxation as well as other sources of income, and came to the conclusion that the proper definition of "revenue" is:

> ". . . the annual and current *income* of the state, however derived, *which is subject to appropriation for general public uses.* This excludes such income as the constitution or any permanent existing law may specifically devote to a special purpose, in contradistinction to a general public use or which is not required to be paid into the state revenue fund, but into a special fund, e. g., the collateral inheritance tax specially collected for the support of the state university and its departments; the money derived from license fees or motor vehicles; fees paid into the state treasury to the credit of the Insurance Department Fund, and others of similar sort." (Italics ours.)

Money which the United States may not use or dispose of is certainly not income of the United States. The fact that the processing tax on Philippine coconut oil is collected by United States collectors and the customary procedural provisions regarding penalties and refunds apply to it, does not make its proceeds revenues or income of the United States. The collectors collect for the Philippine treasury, and the proceeds are not made available for appropriations by Congress. The collectors and the separate fund into which the collections are temporarily placed are

made by the statute simply conduits from the processors to the treasury of the Philippine government.

In *Dooley* v. *United States*, 183 U. S. 151, the question was whether a tax laid on imports into Porto Rico fell within the taxation or revenue provisions of the Constitution. The fact that the collections were made by the United States Internal Revenue collectors was claimed to be an indication that the measure under discussion was a tax or revenue measure. This Court denied this claim, saying (P. 157):

> "The mere fact that the duty passes through the hands of the revenue officers of the United States is immaterial, in view of the requirement that it shall not be covered into the general fund of the Treasury, but be held as a separate fund for the government and benefit of Porto Rico."

The Child Labor Tax statute and other statutes which this Court has invalidated as not true tax laws or constitutional exercises of the taxing power all contained the customary collection and administrative features of a tax or revenue act. Validation of a provision which itself is beyond the power of Congress to enact, certainly cannot be accomplished by merely putting the provision in a general revenue act, nor can such inclusion miraculously convert a fund placed at the exclusive disposal of the executive and legislative organs of the Philippine government into revenue of or for the United States.

The Government's attorneys cite the case of *Hampton & Co.* v. *United States*, 276 U. S. 394, but in that case this Court said (p. 412):

> "So long as the motive of Congress and the effect of its legislative action are to *secure revenue for the benefit of the general government*, the existence of other motives in the selection of the subjects of taxes cannot invalidate congressional action . . ." (Italics ours.)

In the case of *Nigro* v. *United States*, 276 U. S. 332, where Mr. Chief Justice Taft was discussing the Doremus (anti-narcotic) case, the opinion stated (at p. 353):

> ". . . Since that time, this Court has held that Congress by merely calling an act a taxing act, cannot make it a legitimate exercise of the taxing power under section 8 of article I of the Federal Constitution, if in fact the words of the act show clearly its real purpose is otherwise."

Non-revenue provisions are frequently put into general revenue acts, as, for instance, riders. The detailed legislative history of the provisions of Section 602½ of the Revenue Act of 1934 (which is set forth in the appendix, p. 51, and discussed in later portions of this brief) show that until the bill reached the floor of the Senate it contained no special provisions for Philippine coconut oil and required that the proceeds of all taxes on coconut oil shall go into the general fund of the Treasury. When Congress, before it would enact the measure, took Philippine coconut oil out of this requirement, Congress made a radical differentiation between the tax on the processing of Philippine oil and all the other taxes included in the measure. That the Philippine coconut oil provisions constitute a tax on a group of American manufacturers for the Philippine (not the United States) treasury and for Philippine (not United States) revenue is plain.

(a) The word "general" in the expression "general welfare" in Article I, Section 8 of the Constitution is a limitation of the federal taxing power and excludes taxation exclusively for a geographically local beneficiary.

This and other courts have had occasion to interpret the word "general" in the expression "general welfare" in Article I, Section 8 Clause 1, of the Constitution, and have

declared that this word "general" has a significance as a limitation upon the federal taxing power, and that one limitation created by this word "general" excludes an objective which is entirely local.

In *United States* v. *Butler*, 297 U. S. 1 (p. 66), this Court said:

> "That the qualifying phrase must be given effect all advocates of broad construction admit. Hamilton, in his well known Report on Manufacturers, states that the purpose must be 'general, and not local.' . . . Story says that if the tax be not proposed for the common defence or general welfare, but for other objects wholly extraneous, it would be wholly indefensible upon constitutional principles. And he makes it clear that the powers of taxation and appropriation extend only to matters of national, as distinguished from *local*, welfare." (Italics ours.)

In the *Passenger Cases in 1849* (Smith v. Turner), 7 Howard, 283, this Court said (p. 446):

> "Nor has Congress power to lay taxes to pay the debts of a state nor to provide by taxation for its general welfare. Congress may tax for the *Treasury of the Union* and here its power ends." (Italics ours.)

The following passage from the case of *Washington Water Power Company* v. *City of Coeur D'Alene*, District Court of Idaho, 9 Fed. Supp. 263, contains an illuminating expression of the significance of the word "general" in the expression "general welfare" (p. 268-270):

> ". . . The Supreme Court and interpreters of the Constitution have given it the construction that if the welfare be not general but special, it is not within the scope of the constitution, and the limitation of the words 'general welfare' and its object and operation are to be general and not local. It does not grant powers to Congress to appropriate moneys of the national

> government for local or state benefit, as such appropriation is restricted to purposes of common defense and of national benefit, affecting the nation as a whole. This view and spirit and spirit of construction was recognized by the Supreme Court when speaking through Mr. Chief Justice Marshall in considering the general welfare clause in the case of *Gibbons* v. *Ogden*, 9 Wheat. 1,195, 6 L. ed. 23, . . .
>
> 'The discretion in Congress to appropriate money is restricted to purposes of a general nature 'not local, national, not state benefit,' and an appropriation for purely a local purpose would be an abuse of discretion.' ''

Story on the Constitution, 5th edition, Vol. 1, Chap. XIV, Section 922, p. 673, says:

> "A power to lay taxes for any purpose whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, *or local*, as contradistinguished from national, it is not within the scope of the Constitution." (Italics ours.)

Obviously a tax levied for exclusive transfer of the proceeds into the treasury of the state of Illinois, the use of the fund to be controlled by the legislature of that state, would not satisfy this "general" requirement of the Constitution. The Philippine Islands are obviously at least as local as any state. Consequently, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 are not for the general welfare within the meaning of Clause 1, Section 8, Article I of the Constitution, and, being neither for the common defense nor the payment of any of the

United States debt, are not within and therefore are beyond the constitutional scope of the taxing power of Congress.

The contention is made by the Government's attorneys, however, that the Philippine Islands have a special status which makes any levy for the Philippine treasury a tax for the general welfare of the United States. So we will examine the question of the status of the Philippine government and whether the placing of an indefinite amount of money into its treasury, with the uncontrolled expenditure thereof lodged in the legislative department of that government, is a matter which falls within the scope of the "general welfare of the United States" clause of Section 8 of Article I of the Constitution.

(b) The history of the status of the Philippine Islands, as defined by statutes and judicial decisions, shows that the Philippine Islands have never been a part of the United States within the meaning of the revenue clauses of the Constitution.

There is no express authority in the Constitution to levy internal taxes on persons or corporations in the United States for payment into the treasury of a dependency or possession of the United States. To ascertain whether such power is derived, without express provision in the Constitution, from the status of the Philippine Islands requires a presentation of the history of that status as created or defined by the statutes and judicial decisions on the subject.

Before proceeding to this history, some reference should be made to the word or concept "sovereignty," especially as the Government's attorneys seem to emphasize the fact that the United States is still the sovereign of the Philippine Islands. Under the American Constitutional system sovereignty is a phase of international law, not of domestic or constitutional law. As between the United States and other nations, the concept sovereignty may be relevant in the deter-

mination of controversies; but the powers of the Congress of the United States over persons or property or transactions within the United States are determined by the Constitution of the United States and are derived from that Constitution, and, in this instant case, no assistance is derivable from the concept sovereignty or the question whether the United States is the sovereign of the Philippine Islands is irrelevant.

By the Treaty with Spain following the Spanish-American War, in 1899, Porto Rico and the Philippine Islands were ceded to the United States. For a short period thereafter these islands were still under the government of the army of occupation and executive acts of the President. The first congressional act relating to these islands was the Act of April 12, 1900 (31 Stat. C. 191) known as the "Foraker Act," which provided temporarily for a civil government and revenues for Porto Rico and imposed duties on imports from Porto Rico to the United States and from the United States to Porto Rico. In the Acts of March 8, 1902 and Act of July 1, 1902 (C. 1369, 32 Stat. 691) Congress temporarily provided for the revenues for the Philippine Islands and for a civil government, and the latter Act was amended by the Act of February 6, 1905 (C. 453, 33 Stat. 689). In 1916 Congress enacted the Act of August 29, 1916 (C. 416, 39 Stat. 545), known as the Jones Act, which established a more autonomous government for the Philippines and which fixed the status of the Philippine Islands down to the time of the Philippine Independence Act.

The first group of the *Insular Cases* reported in *182 U. S.*, dealt with Porto Rico in the period after the cession but before congressional legislation. The conclusions developed in those cases have been held by this Court and universally recognized as applicable to the Philippine Islands. The third of these cases namely *Downes* v. *Bidwell*,

182 U. S. 244, which applies specially and decisively in this instant case, can be best understood by an extensive examination of the majority and minority opinions in the two cases reported earlier in the volume.

DeLima v. *Bidwell*, 182 U. S. 1, was concerned with the duties on importations of sugar from Porto Rico to the United States in the period previous to any action by Congress, the question being whether the then general (Dingley) tariff law, which fixed the duties on imports from "foreign countries," continued to operate on imports from Porto Rico after that island was ceded to the United States and before Congress passed any legislation on the subject. In addition to very lengthy arguments carried in the report, there are lengthy majority and minority opinions. The majority of the court felt that the issue turned on whether or not Porto Rico ceased to be a foreign country after the cession and that if it had thus ceased, the general tariff law ceased to apply to imports from it. The following is the opening paragraph of the opinion of the Court:

> "This case raises the single question whether territory acquired by the United States by cession from a foreign power remains a 'foreign country' within the meaning of the tariff laws."

This statement of the issue was repeated in different form (p. 176):

> "The question involved in this case is not whether the sugars were importable articles under the tariff laws, but whether, coming as they did from a port alleged to be domestic, they were imported from a foreign country—in other words, whether they were imported at all as that word is defined in *Woodruff* v. *Parham*, 8 Wall. 123-132."

After dealing with the questions of jurisdiction and procedure, the opinion turned to the constitutional question (p. 180) in the following passage:

"Whether these cargoes of sugar were subject to duty depends solely upon the question whether Porto Rico was a 'foreign country' at the time the sugars were shipped, since the tariff act of July 24, 1897 (30 Stat. at L. 151, chap. 11) commonly known as the Dingley act, declares that 'there shall be levied, collected, and paid upon all articles imported from foreign countries' certain duties therein specified. . . .

"The status of Porto Rico was this: The island had been for some months under military occupation by the United States as a conquered country, when, by the 2d article of the treaty of peace between the United States and Spain, signed December 10, 1898, and ratified April 11, 1899, Spain ceded to the United States the island of Porto Rico, which has ever since remained in our possession, and has been governed and administered by us. If the case depended solely upon these facts, and the question were broadly presented whether a country which had been ceded to us, the cession accepted, possession delivered, and the island occupied and administered without interference by Spain or any other power, was a foreign country or domestic territory, it would seem that there could be as little hesitation in answering this question as there would be in determining the ownership of a house deeded in fee simple to a purchaser who had accepted the deed, gone into possession, paid taxes and made improvements without let or hindrance from his vendor. But it is earnestly insisted by the government that it never could have been the intention of Congress to admit Porto Rico into a customs union with the United States, and that, while the island may be to a certain extent domestic territory, it still remains a 'foreign country' under the tariff laws, until Congress has embraced it within the general revenue system."

Then, after a discussion of the source of the power to acquire territory, the opinion (p. 197) posed what were stated as the only two possible theories on which the general tariff law could be held to apply, namely, either that

the word "foreign" applies to all countries which were foreign at the time the statute was enacted regardless of later changes of status, or that a country remains foreign under the tariff laws until Congress formally embraces it within the customs union of the states; and the opinion proceeded to state reasons why the Court considered both these theories to be untenable and came to the conclusion that Porto Rico, after the cession, was not a foreign country and therefore no duties could be collected on imports therefrom.

This majority opinion, written by Mr. Justice Brown, was concurred in by Justices Fuller, Harlan, Brewer and Peckham, and was interpreted by three of the justices of the minority as holding, fallaciously in their mind, that as a matter of United States constitutional law territory must be treated as either completely foreign or completely domestic. The lengthy dissenting opinion, beginning on page 200 of the report, was delivered by Justice McKenna and was concurred in by Justices Shiras and White. It begins with the following passage:

> "Mr. Justice Shiras, Mr. Justice White, and myself are unable to concur in the conclusion of the court, and the importance of the case justifies an expression of the grounds of our dissent.
>
> "Settle whether Porto Rico is 'foreign country' or 'domestic territory,' to use the antithesis of the opinion of the court, and, it is said, you settle the controversy in this litigation. But in what sense, foreign or domestic? Abstractly and unqualifiedly,—to the full extent that those words imply,—or limitedly, in the sense that the word 'foreign' is used in the customs laws of the United States? If abstractly, the case turns upon a definition, and the issue becomes single and simple, presenting no difficulty, and yet the arguments at bar have ranged over all the powers of government, and this court divides in opinion. If at the time the duties which are complained of were levied, Porto Rico was as much a foreign country as it was before the

> war with Spain; if it was as much domestic territory as New York now is, there would be no serious controversy in the case. If the former, the terms and the intention of the Dingley act would apply. If the latter, whatever its words or intention, it could not be applied. Between these extremes there are other relations, and that Porto Rico occupied one of them and its products hence were subject to duties under the Dingley tariff act, can be demonstrated."

This same idea, that the determination of the validity of taxation or other legislation does not turn upon any simple abstract, sharp-cut antithesis of foreign or domestic, is expressed again on page 218:

> "As we have already said, to set the word 'foreign' in antithesis to the word 'domestic' proves nothing. Their opposition does not express the controversy. The controversy is narrower. It is whether a particular law applies. That, indeed, may be the consequence of the principle that all laws apply, or that customs laws apply by reason of the provision of the Constitution which requires duties, imposts, and excises to be uniform throughout the United States, and the treaty-making power cannot prevent the application of that provision."

The conclusion expressed in this dissenting opinion was that the Dingley tariff law continued to operate until changed by congressional action, this conclusion being derived both from the words of the treaty and from the general principle of a continuation of existing status until a new status is created by the appropriate authority.

This dissenting opinion referred to the Court's opinion in *Downes* v. *Bidwell*, supra, as containing the arguments which demonstrated the status of Porto Rico, after the cession, as neither foreign or wholly domestic, but as something between complete foreignness and complete domestication, and proceeds in the final paragraph to say:

> "We said at the outset that it could be demonstrated that Porto Rico occupied a relation to the United States between that of being a foreign country absolutely and of being domestic territory absolutely, and because of that relation its products were subject to the duties imposed by the Dingley act. And, concluding, we say we believe that, in this opinion and the one referred to, we have made that demonstration; made it from the Constitution itself, the immediate and continued practice under the Constitution, judicial authority, and the treaty with Spain. . . ."

Mr. Justice Gray also dissented because he deemed the decision of the majority inconsistent with *Downes* v. *Bidwell*, decided on the same day.

The decision in this *DeLima* case was held applicable to the Philippine Islands in the case of *14 Diamond Rings*, 183 U. S. 176, where the question, precisely like that in the *DeLima* case, was whether, in regard to 14 diamond rings brought into the United States from the Philippine Islands after the cession of the Philippines but before any congressional legislation on the subject, the general Dingley tariff law, which imposed duties on "articles imported from foreign countries," applied. In accordance with its decision in the *DeLima* case, the majority of the Court held that after the cession the Philippine Islands was not a foreign country and, therefore, not subject to the Dingley law. The same four Justices who had dissented in the *DeLima* case dissented in this *14 Diamond Rings* case and for the same reasons.

It is important to note that the opinion of the Court in the *Diamond Rings* case reconciled its decision in that case with its decision in *Downes* v. *Bidwell*, by pointing out that the former was concerned with a general tariff law whose validity would be controlled by the constitutional requirement of uniformity, whereas the latter dealt with a special exaction on imports from Porto Rico, as to which the revenue

provisions of the Constitution would not apply. Thus, in this very first case arising from the Philippine Islands, this Court recognized *Downes* v. *Bidwell* as the authoritative determination by this Court that the Philippines were not a part of the United States within the meaning of the revenue provisions of the Constitution.

The second of the Insular Cases, in order of the reports, was *Dooley* v. *United States*, 182 U. S. 222, which was concerned with a duty on imports from the United States into Porto Rico in the period after the cession and before congressional action. The duty had been levied by the President as Commander-in-Chief of the Army, and the legality of the levy was held to depend on whether or not Porto Rico was a foreign country. The majority of the Court, speaking through Mr. Justice Brown, held that the case was governed by the decision in the *DeLima* case; evidently treating the issues identical whether the taxed articles passed from the United States to Porto Rico or from Porto Rico to the United States.

Again Justices White, Gray, Shiras and McKenna dissented, and in the dissenting opinion, this time written by Mr. Justice White, the following passage occurs (page 237):

> "
>
> "There is a *non sequitur* involved in stating that the question is whether Porto Rico was a foreign country *within the meaning of the tariff laws*, and then discussing, not the question thus stated, but a different subject; that is, whether the territory ceded by the treaty with Spain came under the sovereignty of the United States by the effect of the cession."

and, on page 239:

> ". . . It is settled that the power of Congress to lay an impost duty does not give the right to levy such a duty on merchandise coming from one part of the

United States to the other. *Woodruff* v. *Parham*, 8 Wall. 123, 19 L. ed. 382."

The point of all this to be noted and emphasized is that at least the dissenting judges in the *DeLima* and *Dooley* cases were of the opinion that in cases arising under the Constitution and laws of the United States, the issues do not turn upon any simple distinction between foreign and domestic or upon questions of sovereignty under international law, but that, in the interpretation of American constitutional or statutory law, there are, so to speak, grades of foreignness or domesticity according to the relationships involved in the particular statutes before the Court.

We now come to *Downes* v. *Bidwell*, 182 U. S. 244. In that case the four justices who had dissented in the *DeLima* and *Dooley* cases, joined by Mr. Justice Brown, became the majority of the Court, and, though individual justices or groups of justices wrote separate opinions, the positions taken in the dissenting opinions in the *DeLima* and *Dooley* cases, as described and quoted above, became the authoritative views of this Court on the question of the nature of the status of the insular possessions acquired under the treaty with Spain, in the interpretation and application of the Constitution and statutes of the United States. In 1900 Congress had passed a statute known as the *Foraker Act* (31 Stat. 77, C. 191), entitled an "Act temporarily to provide revenue and a civil government for Porto Rico, and for other purposes." This Act established a temporary civil government to be composed of appointive executive officers and an elective legislative body with comprehensive powers over Porto Rican legislation reserved to the United States. The revenue provisions of the Act levied a tax on imports from Porto Rico into the United States, which imports were at a lesser rate than the rates then prevailing under the general tariff statute. The plaintiff had paid such tax on certain articles coming to New York from Porto

Rico and sued for a refunder thereof. The subject matter of the case was the validity of this imposition upon imports from Porto Rico, or, in other words, whether in dealing with imports from the insular possessions ceded by Spain, Congress was bound by the provisions of Article I, Section 8, Clause 1 of the Constitution, requiring duties, imposts and excises to be uniform "throughout the United States." The opinion of the Court, speaking through Mr. Justice Brown, concluded (p. 287):

> "We are therefore of the opinion that the Island of Porto Rico is a territory appurtenant and belonging to the United States, but not a part of the United States within the revenue clauses of the Constitution; that the Foraker Act is constitutional, so far as it imposes duties upon imports from such Islands, and that the plaintiff cannot recover back the duties exacted in that case."

Three of the concurring Justices, namely Justices White, Shiras and McKenna, speaking through Mr. Justice White, wrote a concurring opinion, which agreed that Porto Rico had not, either by virtue of the cession from Spain or the Foraker Act, become incorporated into and therefore has not and had not become a part of the United States. This opinion cited (p. 309) *Fleming* v. *Page*, 9 Howard 603, which had held that Tampico, although a possession of the United States and, in an international sense, a part of the territory of the United States, yet, "in the sense of the revenue laws, Tampico was a foreign country." This concurring opinion of Mr. Justice White goes on to say (p. 341):

> "The result of what has been said is that whilst in an international sense Porto Rico was not a foreign country, since it was subject to the sovereignty of and was owned by the United States, it was foreign to the

> United States in a domestic sense, because the Island had not been incorporated into the United States, but was merely appurtenant thereof as a possession. As a necessary consequence, the impost in question assessed on merchandise coming from Porto Rico into the United States after the cession was within the power of Congress, and that body was not, moreover, as to such imposts, controlled by the clause requiring that imposts should be uniform throughout the United States; in other words, the provision of the Constitution just referred to was not applicable to Congress *in legislating for Porto Rico.* (Italics ours.)

The fourth concurring Justice, Mr. Justice Gray, also wrote a short concurring opinion (p. 345), in which he states that in substance he was agreeing with the opinion of Mr. Justice White, and he summarizes his reasons for concurrence and emphasized that civil government in the insular possessions

> "... can only be put in operation by the action of the appropriate political department of the [United States] government, at such time and *in such degree* as that department may determine." (Italics ours.)

The minority judges, adhering to the opinions which they had expressed in the *DeLima* and *Dooley* cases, ridiculed the idea that a territory can be partly foreign and partly domestic, and carried this point of view so far as to express the opinion that even if it took congressional action to make any territory a part of the United States, the Foraker Act, when it provided a temporary civil government and a temporary revenue system for Porto Rico, produced a complete incorporation of that Island into the United States.

The levying of duties on imports between Porto Rico and the United States was upheld, not as an exercise of any taxing power granted in the revenue clauses of the Constitution, but as an exercise by Congress of its powers as the

governing body over or of the insular possessions and dependencies. That the decision made and the Court's opinion in *Downes* v. *Bidwell* apply equally to the Philippines has been expressly held and recognized in the cases which arose from the Philippines.

Downes v. *Bidwell* establishes several principles particularly pertinent in the instant case, namely: (a) that the acquisition of the Philippine Islands did not make them a part of the United States within the taxation and revenue clauses of the Constitution of the United States; (b) that the Philippine Islands would not become a part of the United States within the revenue clauses of the Constitution unless and until Congress incorporates them into the United States (which, of course, Congress has never done); (c) that in construing and applying the constitutional law of the United States or the statutes of the United States, as distinguished from international law governing relations between the United States and foreign countries, the antithesis between "foreign" and "domestic" does not exist with relation to the Philippine Islands; (d) that the nature of the status of the Philippine Islands, including the degree of foreignness or domesticity or the degree of dependence or self government, is a matter for determination by Congress, and is, at any time, such as Congress may have determined or defined in the statutes relating to the status or government of the Philippine Islands; and (e) that the levying of duties or imposts upon imports of goods from the Philippine Islands into the United States, or vice versa, are not exercises of the taxing power of Congress under the taxation or revenue clauses of the Constitution or attributable to or sustainable as exercises of such taxing power, but are exercises of the power of Congress as the legislative body over the insular possessions or dependencies which belong to, though are not a part of, the United States and derive their validity from that power.

This ruling as to the meaning of "United States" in the phrase "throughout the United States" certainly applies equally to the words "United States" in the phrase "of the United States." The two "United States" are in the same clause of the same section dealing with the same subject. As Congress has not only never incorporated the Philippine Islands into the United States, but, on the contrary, has progressively increased the degree of their independence, the consequence is that, from the time of the cession from Spain to the present moment, the Philippine Islands have never been and are not a part of the United States within the revenue provisions of the Constitution, that is, within the meaning of Clause 1 of Section 8 of Article I of the Constitution, and no power to levy a tax for the treasury of the Philippine Islands falls within the powers of Congress granted by that clause. If Congress should levy a tax on persons or property in the Philippine Islands, the validity thereof would have to be derived not from the taxation clauses of the Constitution but from the power of Congress as the controlling legislative organ of a possession or dependency acquired by the United States under the war and treaty provisions of the Constitution; and under *Downes* v. *Bidwell*, the same would be true of an import tax on imports from the Philippines. For an internal tax on persons, property or processes within the United States for Philippine, not United States, revenue, the Constitution furnishes no support whatever.

Downes v. Bidwell has been a much cited case, but its authority as establishing the principle that the Philippine Islands did not become and have not been a part of the United States, and that the status of the Islands is a matter for determination by Congress in the statutes which define that status, has never been impaired but, on the contrary, has been repeatedly reaffirmed.

Dorr v. *United States*, 195 U. S. 138, was concerned with the question whether the constitutional requirement of jury trial applied to the Philippine Islands in the period after the cession and before legislation on the subject by Congress, and, citing *Downes* v. *Bidwell*, this Court held that, in legislating for the Philippine Islands, Congress was not limited by the constitutional provision for jury trial, and that the status of the Islands would be such as defined by congressional legislation on the subject, and, speaking of legislation on the subject, the opinion stated (pp. 143-4):

> "The legislation upon the subject shows that not only has Congress hitherto refrained from incorporating the Philippines into the United States, but in the act of 1902, providing for temporary civil government (32 Stat. at L. 691, chap. 1369), there is express provision that section 1891 of the Revised Statutes of 1878 shall not apply to the Philippine Islands. This is the section giving force and effect to the Constitution and laws of the United States, not locally inapplicable, within all the organized territories, and every territory thereafter organized, as elsewhere within the United States."

On the question of the interpretation of the so-called territories clause of the Constitution, Article IV, Section 3, the Court quoted from *Cooley, Principles of Constitutional Law* (pp. 147-148):

> "'. . . The practice of the government, originating before the adoption of the Constitution, has been for Congress to establish governments for the territories; and whether the jurisdiction over the district has been acquired by grant from the states, or by treaty with a foreign power, Congress has unquestionably full power to govern it; and the people, except as Congress shall provide for, are not of right entitled to participate in political authority until the territory becomes a state. Meantime they are in a condition of temporary pupilage and dependence; and while Congress will be ex-

pected to recognize the principle of self-government to such extent as may seem wise, its discretion alone can constitute the measure by which the participation of the people can be determined.' "

See also *Kepner* v. *United States,* 195 U. S. 100.

In *Rassmussen* v. *United States,* 197 U. S. 516, 520, a case concerned with Alaska, this Court said:

". . . The power to acquire territory without incorporating it into the United States as an integral part thereof, as we have said, was sustained upon the reasoning expounded in the opinion of three, if not of four, of the judges who concurred in the judgment in *Downes* v. *Bidwell,* that reasoning being in effect adopted in the *Dorr Case* as the basis of the ruling there made, the court saying:

'. . . Until Congress shall see fit to incorporate territory ceded by treaty into the United States, we regard it as settled by that decision (*Downes* v. *Bidwell*) that the territory is to be governed under the power existing in Congress to make laws for such territories, and subject to such constitutional restrictions upon the powers of that body as are applicable to the situation.' "

In *Balzac* v. *People of Porto Rico,* 258 U. S. 298, which also dealt with the question of constitutional right to trial by jury in Porto Rico, the opinion (p. 305) contains the following interpretation of *Downes* v. *Bidwell:*

". . . It was further settled in *Downes* v. *Bidwell,* 182 U. S. 244, . . . and confirmed by *Dorr* v. *United States,* 195 U. S. 138, . . . *that neither the Philippines* nor Porto Rico *was territory which had* been incorporated in the Union or *become a part of the United States,* as distinguished from merely belonging to it; and that the acts giving temporary governments to the Philippines (July 1, 1902, 32 Stat. at L. 691, . . .), and to Porto Rico (April 12, 1900, 31 Stat. at L. 77, . . .), had no such effect. *The Insular Cases revealed much*

diversity of opinion in this court as to the constitutional status of the territory acquired by the Treaty of Paris . . . ending the Spanish War, but the Dorr Case shows that the opinion of Mr. Justice White of the majority in Downes v. *Bidwell has become the settled law of the court.''* (Italics ours.)

See also *Neuss Hesslein & Co.* v. *Edwards,* 24 Fed. (2d) 999.

(c) The statutes defining or establishing the status of the Philippine Islands.

The *Act of March 8, 1902, 32 Stat. at L. 54,* contained provision for revenues for the Islands in the form of a tax on imports of Philippine products for payment into the Philippine treasury at a rate less than the duties on similar products from foreign countries, which taxes, of course, had exactly the same legal basis as specified in *Downes* v. *Bidwell,* namely an exercise of the powers of Congress as the legislative organ over insular possessions, but did not change the status of the Philippine Islands. Then came the *Act of July 1, 1902, C. 1369, 32 Stat. 691,* which provided a government for the Philippines, with a local elective legislative body and some degree of local self-government and many provisions which were repeated in the later Jones and Independence Acts.

A major change in the status of the Philippine Islands was made by Congress in the *Act of August 29, 1916, C. 416, 39 Stat. 546* (*Jones Act*). This may be said to have created the first autonomous government of the Philippine Islands and defined the status of the Islands during the whole period until the Independence Act of 1934. The 1916 Act enlarged the field of Philippine self-government, or, in other words, diminished the field of Philippine dependence; and, indeed, in all its legislation concerning the Philippine Islands, Con-

gress has progressively enlarged the field of self-government and diminished the field of dependence, so that not only has Congress not incorporated the Philippines into the United States, but, on the contrary, has increasingly taken the opposite direction.

In this connection the preamble of the *Jones Act* is significant. It reads:

> "Whereas it was never the intention of the people of the United States in the incipiency of the war with Spain to make it a war of conquest or for territorial aggrandizement; and
>
> "Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein; and
>
> "Whereas for the speedy accomplishment of such purpose it is desirable to place in the hands of the people of the Philippines as large a control of their domestic affairs as can be given them without, in the meantime, impairing the exercise of the rights of sovereignty by the people of the United States, in order that, by the use and exercise of popular franchise and governmental powers, they may be the better prepared to fully assume the responsibilities and enjoy all the privileges of complete independence . . ."

This clearly shows a determination of Congress that the Philippine Islands had not been incorporated into the United States and that, on the contrary, congressional legislation would be in the direction of increasing self-government until complete independence be reached.

In the Appendix, pp. 4-15, will be found the text of those sections of the *Jones Act* most relevant to the question of the status given to the Philippine Islands by that Act.

Section 1 defines "the Philippines"; Section 2 deals with the citizenship status of the inhabitants.

Section 3 (quoted in full in the Appendix, p. 4) is in the nature of a bill of rights, and contains the provision that "no money shall be paid out of the treasury except in pursuance of an appropriation by law." The treasury referred to is the treasury of the Philippine government, and the "appropriation by law" refers to acts of the Philippine legislature; thus showing that from at least this 1916 statute the control over purposes for which moneys in the Philippine treasury can be used was placed in the Philippine legislature.

Section 4 (Appendix, p. 5) requires the government of the Philippines to pay all of its own costs and expenses for the salaries of its officials and the conduct of their offices and departments, and all expenses and obligations contracted for the internal improvement or development of the islands, excepting only the military works undertaken by the United States.

Section 19 (Appendix, p. 10) provides that if the Philippine legislature fails to appropriate the amounts necessary for the support of the government for an ensuing fiscal year, the sums appropriated in the previous appropriation bill shall be deemed as reappropriated for the same objects and purposes for the ensuing year.

Section 29 (Appendix, p. 15) provides that the salaries of all officials of the Philippines, including deputies, assistants and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine legislature, and, if the Philippine legislature fails to make the appropriation, salaries so fixed shall be paid without the necessity of further legislative action.

These provisions of the *Jones Act* plainly demonstrate that the policy of Congress, in dealing with the status of

the Philippines, was that all the expenses and costs and debts of the Philippine government shall be paid out of its own revenues and appropriated by its own legislature. That policy has been adhered to.

The import duties on Philippine products have under the principle of *Downes* v. *Bidwell* always been deemed to be Philippine revenues, that is, revenues collected for the account of the Philippines, and, in accordance with this, the Philippine government has always been prohibited from levying taxes on exports from the Philippines to the United States.

Early in his term of office, President Harding appointed a special Mission on Investigation to the Philippine Islands, which made its report in October, 1921, and this report contains the following paragraph:

> "The Philippine Islands, contrary to general belief, have maintained all the expenses of civil administration since the beginning of American operation from insular revenues and without assistance from the Treasury of the United States, which has, however, defrayed all the costs of the military and naval establishments and fortifications. The only aid received by the Philippine government from the United States has been a $3,000,000.00 appropriation for famine relief made in 1903."

This report will be found published in full in the Appendix of "The Philippine Islands" by W. Cameron Forbes (1928), on page 241 of Volume I of that work. In Chapter 6 of that work, the author states:

> "The civil administration of the Philippine Islands, contrary to a very prevailing misapprehension, has been self-supporting from the beginning of American occupation in August 1898."

These statements would be fully true as of today, for at no time since 1921 or 1928 has the United States contrib-

uted to the treasury of the Philippine Islands or to the expenses or debts of the Philippine government. Under the Act of June 19, 1934 (48 Stat. at L., Pt. 1, Chap. 655, p. 1115), the Philippine treasury was credited with $23,862,750.78, which was the profit resulting from the devaluation of the dollar to the gold equivalent of the balance maintained by the Philippine government in United States banks for its gold standard and treasury certificate funds, but that can hardly be deemed to impair the correctness of the above statements made as of today.

The provisions of the Revenue Act of 1934 levying an internal revenue tax on American persons or transactions for the Philippine treasury is unprecedented and a departure from all practice both before and since the enactment of the *Jones Act*.

Returning to the description of the *Jones Act:*

Section 5 provides that the statutory laws of the United States thereinafter enacted shall not apply to the Philippine Islands except when they or the *Jones Act* specifically so provide. Section 6 provides that the laws then in force in the Philippines shall continue in force except as they may come to be altered or repealed by the Philippine legislature or by Congress; and Section 7 gives the Philippine legislature the authority to amend or repeal any law continued in force by the Act, excepting where such amendment or repeal would be inconsistent with the Act, and this power of the Philippine legislature to alter or repeal is made specifically applicable to laws relating to revenue and taxation in the Philippines.

Section 9 (Appendix, p. 6) provides that all the property and rights acquired in the Philippine Islands by the United States under the Treaty of Peace with Spain, excepting property designated by the President of the United

States for military or other reservations of the United States, as well as all lands acquired by the Philippine government by purchase, including the land purchased from the religious orders, are placed under the control of the Philippine Islands for the purpose of being administered or disposed of for the benefit of the inhabitants of the Islands; and the Philippine government is given power to legislate with respect to all such property and rights; but acts of the Philippine legislature with respect to the public domain, mining and timber require approval by the President of the United States, who is given a six months period within which to disapprove. The section goes on to provide that where lands of the Islands "have been or may be reserved for any public purpose of the United States" and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said islands, the order of the President shall be regarded as effectual to give the government of Islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of the Islands. Note that this section treats lands reserved by the United States as reserved "*for the public purpose of the United States*" and places within full control of the Philippine government all lands and rights *not* reserved for "the *public purpose of the United States*"; clearly indicating the congressional intention that all those matters which are reposed in the Philippine government are *not a public purpose of the United States.*

Section 10, which recognizes the right of the Philippine government to enact a tariff law, reserves to Congress direct control over trade relations between the Islands and the United States, and requires the approval of the President for amendment to the tariff of the Philippine Islands. Section 11 prohibits export duties on exports from the Philippines, but otherwise grants a general taxing power

to the Philippine legislature as well as the power to issue bonds and other obligations up to a designated amount.

Section 8 provides that the legislative power is granted to the Philippine legislature, and Section 12 invests these general legislative powers in the Philippines, except as otherwise provided in the Act, in a legislature of two houses, namely the Senate and the House of Representatives. The memberships of each House under Sections 13 and 14 were made elective by the electors of the Philippines.

By Section 21 the chief executive of the Philippine Islands is the Governor-General, to be appointed by the President of the United States, and, under Section 19, he has a substantial veto power over acts of the Philippine legislature. Section 19 also provides that laws enacted by the Philippine legislature shall be reported to Congress, which reserves the power and authority to annul the same. Under Section 21 the Governor-General has the power of appointing certain officers and is given general supervision and control over the departments and bureaus of the Philippine government; but the structural organization of the Philippine administration is left to the Philippine legislature to determine. In general, the Governor-General was given the customary powers of a chief executive.

Sections 23 and 24 provide for a Vice-Governor and Auditor to be appointed by the President. Section 26 and succeeding sections provide for the judicial system, giving the appointment of justices of the Supreme Court to the President of the United States and of the lower courts to the Governor-General; also providing for appeals to the Supreme Court of the United States. Section 28 deals with franchises.

Many of the above noted provisions of the *Jones Act* will be found in the *Independence Act of 1934* in substantially the same form. In general, therefore, the *Act of 1916* cre-

ated a Philippine legislature, elected by the people of the Islands, with all the usual legislative powers, subject to certain reservations in Congress or the President; created a chief executive with the customary powers of a chief executive, but kept the power of appointing him and his staff in the President and Senate of the United States; provided for a complete judicial system with the appointment of justices and judges reserved to the United States and with appeal to the Supreme Court of the United States; treated all Philippine lands and rights acquired from Spain or subsequently acquired as the property of and under the control of the Philippine government, excepting only the United States military reservations; and provided for a taxation and revenue system under which the Philippine government was to pay all of its expenses and obligations out of its own revenues, and appropriations from the Philippine treasury by the Philippine legislature were made requisite to any expenditure from that treasury.

The *Jones Act* will be searched in vain for any provision whereby the exercise of any power reserved to the United States was to be financed out of the Philippine treasury. The salaries of the Governor-General and his staff and other officers expressly to be appointed by the President of the United States were treated as expenses of the Philippine government. There is no provision requiring or contemplating any payment by the United States from its own revenues into the Philippine treasury or for the expenses of the Philippine government.

As under the less independent status of the period previous to the *Jones Act* the Philippines were held by this Court as not within the revenue provisions of the Constitution, a fortiori the imposition of taxes on United States persons and transactions for the treasury of the Philippine government established by that Act would not be within the scope of Clause 1, Section 8 of Article I of the Constitution.

(d) The Philippine Independence Act, while postponing complete independence, further reduced the degree or fields of dependency and increased the degree or fields of independence. The levy on coconut oil processing for payment into the Philippine Treasury bears no relationship whatever to the financing of the powers of the United States reserved in the Independence Act. The tax is levied for the Philippine Government, not for the government of the United States, and is consequently outside the constitutional scope of the federal taxing power.

We now come to the Philippine Independence Act, and to the changes in the status of the Philippines created by that Act, which is set out in full in Appendix pp. 16-31.

The Independence Act provided, from the time of the taking effect thereof, a grant to the Philippines of independent powers greater than the previous Philippine government had possessed. Full and complete independence was postponed for a ten-year period, but during that period an increased field of self-government was granted to the new Philippine government; or, to put it another way, the degree of dependency was or the fields of dependency were greater lessened and the degree or fields of independence greatly enlarged; with the consequence that the Philippine Islands not only were not incorporated into or made a part of the United States, but on the contrary became less of an appurtenance to, less a possession of and less a dependency of the United States than before.

Section 1 of the Act provides that the Philippine legislature be called into convention to formulate and draft a constitution for the Government of the Commonwealth of the Philippine Islands: Section 3 provides for the submission of the draft to the President of the United States, and, if approved, Section 4 provides for its submission to the Philippine people, and if a majority of votes be in favor of the constitution, such vote is to be deemed an expression

of the Philippine people in favor of Philippine independence; whereupon, the Governor-General of the Philippine Islands is to call an election for the election of the officers of the Government of the Commonwealth of the Philippine Islands provided for in the new constitution; the results of the election are to be certified to the President of the United States, who is thereupon to issue a proclamation announcing the results of the election, and, upon the issuance of such proclamation, the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers and duties as provided in the new constitution.

Section 2 specifies a number of mandatory provisions regarding the character of the constitution. Insofar as they relate to powers reserved to the United States, they will be discussed in detail later in this brief (infra, pp. 53-56), and a further detailed discussion of them at this point is therefore omitted.

Section 5, corresponding to a similar section of the *Jones Act*, provides that all property and rights acquired in the Philippine Islands by the United States under the treaty with Spain, except land or other property theretofore designated by the President for military or other reservations of the Government of the United States, are granted to the new Government of the Commonwealth of the Philippine Islands.

Section 6 deals generally with trade relations between the United States and the Philippines in the ten-year period preceding complete independence. The only provision thereof with which the present case is closely concerned is that which fixes 200,000 long tons of coconut oil per annum as the maximum quota exempt from general customs or tariff duties of the United States. As will be seen later, this paragraph of Section 6 played an important

role in the legislative history of the Philippine coconut oil provisions of the Revenue Act of 1934.

Sections 7 and 9 deal with certain relations between the United States and the Philippine Islands during the ten-year period preceding withdrawal of American sovereignty which will be discussed shortly. Section 8 deals with immigration.

From that point on the Act relates to the period after complete independence, until we come to Section 15, which continues in force the laws effective at the time of the enactment of the Independence Act until amended or repealed, respectively, by the legislature of the Commonwealth or Congress and specifies that the new Commonwealth government shall be the successor to the then (that is, the *Jones Act*) government of the Philippines.

As the Independence Act authorized the President to approve of the constitution of the new Commonwealth as framed by the Philippine legislature and approved by the Philippine electorate, the provisions of that constitution became a part of the legal material which creates and defines the status of the Islands after the enactment and acceptance of the Independence Act. That constitution was intended to be the constitution for both the ten-year period and the post-independence period; and the reservations of the powers of the United States operative during the ten-year period were placed in what was called an "Ordinance Appended to the Constitution." This constitution is a lengthy document, and, as some of its details are not of significance on the specific issues of the instant case, the full text has not been included in the Appendix but will be found in *House Document 400, 74th Congress, 2d Session*, pages 5 ff., which is a compilation of documents relating to the inauguration of the new government of the Philippines. The more relevant parts have been copied in the

Appendix, the pages of which will be cited as we reach them in the description of the constitution; to which we will now proceed.

Article I defines the national territory; Article II is entitled "Declaration of Principles," and Section 1 thereof contains the sentence—"Sovereignty resides in the people and all government authority emanates from them." Article III is the Bill of Rights; Article IV defines citizenship; Article V deals with suffrage.

Article VI creates the bi-cameral legislative department, designates it "National Assembly," and provides for the election of members (who are required to be Philippine electors), sessions and other customary matters. Its opening sentence is "The legislative power shall be vested in a National Assembly." It provides for an annual budget submitted by the president of the Commonwealth, and grants veto powers to that president, including a veto power over particular items of the appropriation bill; and specifies that "No money shall be paid out of the treasury except in pursuance of an appropriation made by law." (The text of Sections 1, 2, 9 and 13 of Article VI are in Appendix, pp. 32-33.)

Article VII deals with the executive department, and Section 1 provides that "The executive power shall be vested in a President of the Philippines." This president is to be elected by the direct vote of the people of the Philippines. As the chief executive had theretofore been an appointive office filled by the President of the United States, this change, considering the great powers granted to the president of the Philippine Commonwealth, constitutes a great enlargement of the self-governing field of the Philippine government. (The text of Sections 1, 2, 3, 11 and 12 of this Article are in Appendix, pp. 33-35.)

Article VIII is concerned with the judicial department, and provides for appointment of all justices and judges by

the president of the Commonwealth with the consent of the National Assembly's Commission on Appointments.

Articles IX to XI deal with impeachment, the general auditing office, and the civil service.

Article XII (Section 1 of which is in Appendix, p. 36) deals with conservation and utilization of natural resources, and grants to the state, that is, the Philippine Commonwealth, very extensive powers over land and other natural resources; Article XIII deals with the flag, the oath to support and defend, the official language and miscellaneous matters; and Article XIV deals with amendments.

The *Ordinance Appended to the Constitution* (set forth in full in the Appendix, pp. 37-40) sets forth those powers reserved to the United States and those relationships between the new Philippine Commonwealth and the United States which, under the provisions of the Independence Act, are to be in force during the ten-year period between that Act and final and complete independence.

The Independence Act, together with the approval of the new Philippine constitution, grants complete legislative, executive, and judicial powers to the new Philippine government, subject only to the express reservations contained in the Act and the Ordinance, and with a definite commitment to complete termination of American sovereignty at the end of the ten years. The status thus created by Congress during the ten-year period represents, as a matter of United States constitutional and domestic law as distinguished from international law, a great decrease of the field of Philippine dependency and a corresponding great increase of the field of Philippine self-government or independence.

The congressional policy of independence for the Philippine Islands, as distinguished from either complete dependence or complete incorporation into the United States, has been to commit the United States to ultimate independence,

to take the road leading to that goal and, from time to time along the road, to enlarge the field of non-dependence and self-government. As under *Downes* v. *Bidwell* and subsequent cases, the Philippine Islands were not a part of the United States, within the meaning of the revenue clauses of the Constitution, at the beginning of American ownership of those islands, and could become a part only by Congress' incorporating them as a part, a fortiori they have become less than ever, so to speak, a part of the United States since the enactment of this Independence Act, and the revenue or taxation clauses of the Constitution grant no power to levy a tax on persons or transactions within the United States for the treasury of the government of those Islands, that is, for the financing of those functions of that government which fall within the granted field of self-government and which under the express provisions of the Independence Act are to be paid for by the Philippine government out of its own revenues.

The attorneys for the Government, in their argument below, seemed to contend that the Philippine coconut oil tax may be considered an exercise of the power of the United States to raise and expend revenues for the financing of the duties and responsibilities of the United States in relation to the Philippines. This contention is completely untenable. In levying the tax for the Philippine treasury, Congress was not purporting to, was not seeking to and did not levy the tax to finance the performance by the United States Government of its own reserved functions in or for the Philippines. Any such contention is utterly unrealistic. The United States would naturally place in its own treasury moneys which it is to expend for the performance of its functions; yet not one penny levied on Philippine coconut oil is for the United States Treasury. Furthermore, the moneys levied and collected are required to be transmitted to the Philippine treasury without the

slightest condition, limitation or provision that they shall be expended for anything which has any relationship whatever to the performance by the United States of its duties and responsibilities in relation to the Philippines or the financing thereof.

Let us examine in some detail the powers reserved by the United States in the Independence Act, to check up whether the levying on the processing in the United States of Philippine coconut oil for the Philippine treasury can be found to have any relationship to the financing of the exercise by the United States of the powers, responsibilities and functions which it reserved in the Independence Act and which were granted in the Ordinance appended to the new Philippine constitution. The references will be to sections of the Act and the Ordinance.

Act Section 2-(a)-(1)—Ordinance Section 1-(1) provides that all citizens of the Philippine Islands shall owe allegiance to the United States. This can hardly be said to involve any expenditure by the United States; but if the enforcement of the allegiance should require activity by the United States, that activity would have to be financed out of appropriations from the general treasury of the United States and could not, under the Revenue Act of 1934, be taken out of the moneys transmitted to the Philippine treasury.

Act Section 2-(a)-(4)—Ordinance Section 1-(4) provides that property owned by the United States shall be exempt from taxation. This is simply a restraint upon tax laws of the Philippine government and involves no expenditure by the United States. Just the contrary, it frees the United States from expenditure.

Act Section 2-(a)-(6)—Ordinance Section 1-(6)—This provides that the public debt of the Philippines shall not exceed limits now or hereafter fixed by the Congress of the United States, and that no loans shall be contracted in for-

eign countries without the approval of the President of the United States. The exercise of these powers of the United States would involve action by Congress or the President. Congressmen and the President have annual salaries and these and their expenses would be paid out of United States revenues and appropriations.

Act Section 2-(a)-(7)—Ordinance Section 1-(7) provides that the debts, liabilities and obligations of the Philippine Government and its subdivisions, valid and subsisting at the time of the adoption of the Philippine constitution, shall be assumed and paid by the new government. This exempts the United States from any financial responsibility, and so involves no expenditures by the United States.

Act Section 2-(a)-(9)—Ordinance Section 1-(9) provides that acts affecting new currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States. Here again the exercise of the reserved power would consist simply of an act of the President not requiring any financial outlay other than the regular appropriations for the President and his office.

Act Section 2-(a)-(10)—Ordinance Section 1-(10) provides that foreign affairs shall be under the direct supervision and control of the United States. The exercise of this control would of course be by the State Department and other departments or agencies of the United States and would be and are paid for under the regular appropriation acts out of the general fund of the Treasury. The proceeds of the coconut oil tax are not made available for the cost of this control.

Act Section 2-(a)-(12)—Ordinance Section 1-(12) requires that the Philippine Islands recognize the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed

forces all military forces organized by the government of the Commonwealth of the Philippines.

Certainly the United States would pay out of its own funds for property which it took for its military establishments and the expenses of its own military forces. In so far as the Philippine government may be required to finance the service of its own armed forces, there is nothing to indicate or require that the coconut oil fund is to be or may be drawn upon for that purpose.

Act Section 2-(a)-(13)—Ordinance Section 1-(13) provides that certain decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines. Naturally the financing of this judicial authority would come from the United States Treasury and appropriations for this Court.

Act Section 2-(a)-(14)—Ordinance Section 1-(15) provides that the United States may, by presidential proclamation, exercise the right to intervene for the preservation of the government of the Philippines and for the maintenance of that government as provided in that government's constitution, and for the protection of life, property and individual liberty and for the discharge of the government's obligations under and in accordance with the provisions of the Philippine constitution.

Certainly if the United States should have occasion to exercise this right of intervention, it would do so through its own officials, departments, military and naval establishments, all of which would be paid for out of the congressional appropriations for these officials, departments and establishments and from the Treasury of the United States. At any rate the Revenue Act of 1934 does not reserve any right to pay for such intervention out of the coconut oil proceeds.

Act Section 2-(a)-(15)—Ordinance Section 1-(16) provides that the United States may appoint a United States

High Commissioner to the government of the Philippine Commonwealth. The section provides that said Commissioner shall be recognized. This recognition is an act of the Philippine government and involves no expense to the United States, and the Independence Act expressly specifies that the salary and expenses of the Commissioner and his staff shall be paid by the United States, and this cost is included in the regular general appropriation acts of Congress.

Act Section 2-(b)-(1) provides that the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled and existing property rights of citizens or corporations of the United States in the Philippines shall be safeguarded. In so far as activity of agents of the United States are necessary in the process of this adjustment or safeguarding, naturally they would be paid by the United States out of its own revenues and appropriations for that purpose.

Act Section 6—Ordinance Section 1-(5) specifies the quotas of certain Philippine products coming into the United States which are to remain free from customs duties and, as to the amounts above the quotas, fixes the same rates of duties as are imposed upon like articles from foreign countries. Of course, any expense connected with the levying or collection of such duties comes out of the regular appropriations to the Treasury Department or customs offices and from the United States Treasury. The section contains provisions requiring the Philippine Commonwealth to pay all the debts of the Philippine Islands and its subdivisions; thus exempting the United States from those obligations.

Act Section 7-(1)—Ordinance Section 1-(18) provides that amendments to the constitution of the Philippine Commonwealth shall be submitted to the President of the United States for approval. This may require action by the Presi-

dent, which, so far as it involves an expense, would come out of the appropriations for the President and his office.

The same is true of Act Section 7-(2) [Ordinance Section 1-(19)] which authorizes the President of the United States to suspend the taking effect of any law, contract or executive order of the Philippines which in his judgment will result in failure of the Philippine Commonwealth to meet its contracts and indebtedness.

Act Section 7-(4)—Ordinance Section 1-(16) deals with the United States High Commissioner to the Government of the Philippine Commonwealth, who is given powers to see to it that the Philippine government complies with the obligations assumed in the Independence Act. The President is authorized to enforce these obligations through seizure of the Philippine customs, obviously a fund entirely other than the coconut oil tax fund. There is the express provision that the compensation of the Commissioner and of his staff and assistants shall be such as "may be appropriated for by Congress," which obviously contemplates that this expense is to be taken from the United States Treasury and negatives any intention to use the coconut oil proceeds for the purpose.

This completes the list of the powers and responsibilities reserved to the United States, and the Independence Act will be searched in vain for the discovery of any power or responsibility of the United States which is to be or will be financed by the transmission of the coconut oil tax proceeds into the Philippine treasury. There is nothing in the Philippine coconut oil provisions of the Revenue Act of 1934 which requires the Philippine Commonwealth to use a penny of these proceeds for the financing of the exercise by the United States Government or any of its officials or departments of the aforesaid powers reserved by the United States or of the responsibilities of the United States or any of them; and that Commonwealth, acting through its own

legislature and executive departments, may do what it pleases with the money and presumably will use it in the financing of its exercise of its own powers of self-government, that is, for the purposes and in the fields in which it has independent powers and uncontrolled discretion.

The result is that the petitioner and other manufacturers in the United States who use Philippine coconut oil in the manufacture of their products are required by Section 602½ of the Revenue Act of 1934 to pay into the Philippine treasury moneys with which to finance the exercise by the Philippine government of its own powers of self-government and not for the financing of any matter for which the United States has any responsibility, duty or obligation, or over which the United States has any control or exercises any of its powers.

If the purpose of Congress had been to finance the duties and responsibilities of the United States within or to the Philippines, then the laying of the tax for payment into the Philippine treasury, without any control over the expenditure or any specification or itemization of what was to be done with the money, that is, without anything in the nature of an appropriation of the money by Congress itself, as distinguished from a mere direction that it be transferred to the Philippine treasury, would fall afoul of the constitutional principle that Congress cannot delegate its legislative powers. The determination of the purpose and activities for which tax levies are to be made and collected and the proceeds expended is a legislative province, and Congress cannot delegate that determination to the Philippine legislature or to any body.

Knickerbocker Ice Co. v. *Stewart*, 253 U. S. 149, was concerned with an Act of Congress making the workmen's compensation laws of states applicable to injuries sustained in maritime work. This Court held this to be an invalid delegation of Congress' legislative discretion, saying (p. 164):

". . . The subject was intrusted to it, to be dealt with according to its discretion,—not for delegation to others. To say that because Congress could have enacted a compensation act applicable to maritime injuries, it could authorize the states to do so, as they might desire, is false reasoning. . . .

"Congress cannot transfer its legislative power to the states,—by nature this is nondelegable."

Analogously, certainly, Congress could not delegate to the Philippine legislature the determination of the purposes for which United States revenues are to be expended.

(e) The group of statutes cited by the Government's attorneys.

The Government's attorneys cite a group of statutes which they claim to be precedents for the provisions of the Act of 1934 with which this case is concerned, namely: Act of March 8, 1902, c. 140, 32 Stat. 54, Sec. 4 (U. S. C., Title 19, Sec. 123[a]); Act of August 5, 1909, c. 6, 36 Stat. 11, 84-85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686.

Previous to American possession, an export tax on all products exported from the Philippines prevailed. As early as 1901 Congress prohibited an imposition of export taxes so far as exports to the United States were concerned. From the time of the beginning of the American occupation in 1898 down to about the end of 1901, regular American tariff duties were collected on Philippine imports. This was stopped by the decision of this Court in the *Diamond Rings Case*. Then Congress enacted the 1902 Act (the first of the above statutes cited by the Government), which Act was called "An Act to temporarily provide for revenues for the Islands." It provided that there shall be collected on all articles coming into the Philippine Islands

from the United States the rates of duties upon like articles imported from foreign countries; and that upon all articles coming into the United States from the Philippine Islands there shall be collected the same rates of duties which are collected upon like articles from foreign countries, except that on articles the growth or product of the Philippine Islands only 75% of such duties shall be collected. Then the statute proceeded:

> "All duties and taxes collected in the Philippine Islands in pursuance of this Act and all duties and taxes collected in the United States upon articles coming from the Philippine Islands and upon foreign vessels coming therefrom, shall not be covered into the general fund of the treasury of the United States, but shall be held as a separate fund to be paid into the treasury of the Philippine Islands to be used and expended for the government of said Islands."

It will be noted that the taxes levied were designated as duties upon articles coming into the United States from the Philippine Islands, and such articles were given the benefit of a 25% reduction in duties as compared with foreign countries. Obviously, and indeed as was pointed out in *Dorr* v. *United States* (supra), this statute was an exercise of the power of Congress as the governing body of the Philippine Islands, and the provision for placing the proceeds of the duties, as they were called, in the Philippine Treasury was a logical consequence of and possibly a constitutional necessity from the decisions in *Downes* v. *Bidwell*, the *Diamond Rings Case* and the subsequent insular cases.

The 1909 statute, the second of the statutes referred to by the Government's attorneys, was the Payne-Aldrich tariff bill, which, so far as the exactions denominated customs duties were concerned, almost established free trade between the United States and the Philippines. This Act also provided that

> "there shall be levied in the United States upon articles . . . *coming into* the United States from the Philippine Islands, a tax *equal to* the internal revenue tax imposed in the United States upon like articles of domestic manufacture . . . and there shall be levied . . . in the Philippine Islands upon articles from the United States a tax equal to the internal revenue imposed in the Philippine Islands upon like articles of Philippine manufacture." (Italics ours.)

The articles referred to are those types of articles on which United States internal revenue taxes are imposed (liquors, cigars, etc.), and, in the case of the Philippines, these articles have consisted almost entirely of cigars and tobacco. This 1909 statute then proceeded to provide that

> "from and after the passage of this Act all internal revenues collected in *or for the account of the Philippine Islands* shall accrue intact to the general government thereof and be paid into the insular treasury and shall be allotted and paid out thereof in accordance with the future acts of the Philippine legislature, subject, however, to Section 7 of the Act of Congress of July 1, 1902, and provided further that until action by the Philippine Islands legislature approved by Congress, internal revenues paid into the insular treasury as hereinbefore provided shall be allotted and paid out by the Philippine Commission." (Italics ours.)

This was the period of the Philippine Commission and before the 1916 Act which first established an autonomous government. Note that the taxes "equal to" internal revenue taxes were to be collected on articles "coming in" to the United States "for the account of the Philippine Islands." These provisions obviously adhere to the concept developed and determined in *Downes* v. *Bidwell* and the subsequent cases dealing with the Philippines, that taxes upon the import of Philippine products are levied and collected in the exercise of the power of the United States

as the governing body of the Philippine Islands, and derive their validity from that power and not from the taxation provisions of the Constitution.

The next of the cited statutes is the 1913 statute, which was the Underwood Tariff Act, which abolished such quota limitations as had been retained in the Payne-Aldrich Act of 1909, and repeated the provisions for imposition of taxes in the United States upon articles coming into the United States from the Philippine Islands equal to the internal revenue taxes imposed in the United States upon like articles made in the United States, and likewise with an analogous provision for a tax measured by the Philippine tax upon like articles imported into the Philippines from the United States. This 1913 statute contained the same provisions that

> "all internal revenues collected in or for the account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury."

The next of the cited statutes is the Tariff Act of 1922 (the Fordney-McCumber Tariff Act), which continued, substantially without change, the provisions of the 1909 and 1913 tariff statutes as above-described. This is also true of the 1930 statute, namely the Smoot Hawley Tariff Act, which retained the two policies embodied in the previous Act, namely free trade so far as the taxes designated as duties are concerned, and that, on articles "coming into the United States," there is to be collected taxes "equal to" the United States internal revenue taxes on like articles and "for the account of the Philippine Islands." The section of the 1930 Tariff Act dealing with the Philippine Islands, namely Section 301 of the Act of June 17, 1930 (C. 497, Title III, 46 Stat. 685), is Section 1301 of the U. S. Code, Title 19, Subtitle III, Part I, which, for con-

venience in verifying and examining the phraseology used in the provisions of these tariff statutes relating to the Philippine Islands; will be found set forth in full in the Appendix, p. 41.

In language identical with the provisions of the earlier tariff acts, the 1930 statute expressly treats these taxes as "*collected for account of the Philippine Islands.*" Significantly, the Philippine products which are subjected to this tax are expressly exempted from any internal revenue tax levied by the Philippine government.

It is quite obvious that these taxes levied on Philippine articles in the group of statutes cited by the Government's attorneys, are import taxes, and not internal taxes. They are measured by the internal revenue taxes on like articles manufactured in the United States, but they are levied upon the "*coming into the United States*" from the Philippines. The provisions levying these taxes have always been placed exclusively in tariff statutes and never in any internal revenue statute.

That this is the nature of these taxes is further demonstrated by the fact that the regulations relating to the collection of the tax have been included in the customs regulations and not in the internal revenue regulations. See *Article 259 and Article 501 of Chapter 9 of the Customs Regulations of 1931.* They are paid by means of internal revenue stamps, but the articles remain in the custody or control of the customs officers and are not released to the consignee or importer unless and until the stamps are affixed. Usually the stamps are affixed in the Philippine Islands before the exportation. The *Treasury Department Combined Statement of Receipts and Expenditures Balances, etc., of the United States, Fiscal Year ending June 30, 1934, page 71,* shows that the amounts of these taxes paid by stamps affixed in the Philippine Islands was $464,289.87, whereas the amount affixed after the arrival in the

United States was $9,891.98. It is noteworthy that in this report of the Treasury Department these are designated "Philippine Islands Revenues," whereas another sum which appears on the same page is referred to as "United States Revenues." Where articles arrive without the stamps, the customs regulations specify the procedure whereby the affixing of the stamps is required before the articles will be released by the customs department. The procedure is that the customs officials issue a form known as No. 923, which is a request to the Internal Revenue Bureau to sell to the consignee the necessary stamps. The consignee then goes to an internal revenue office, presents this request and purchases the necessary stamps and takes them back to the customs office, where they are affixed to the article. If the consignee fails to call for his article or produce the necessary revenue stamps, then, after the designated period, the customs department sells the article for at least the amount of the tax or the purchaser at the sale affixes the tax stamps. Where the articles are shipped by parcel post, the same procedure is followed. namely that the customs department issues form 923 requesting sale to the consignee of the necessary revenue stamps and the postmaster does not release the articles to the consignee until, in accordance with the orders of the customs officials, the stamps shall have been affixed. The internal revenue officers have no part in the procedure other than that of selling the stamps upon the formal requests of the customs officers; excepting that, in the very rare circumstances that the consignee fails to purchase the stamps and take out his articles and the customs department finds that it cannot sell the articles to a purchaser who will affix the stamps or for the amount of the stamps, then the customs department asks the internal revenue department as to its desires concerning the disposition of the articles. As provided in the statutes under discussion and

as we have seen in the above cited report of the Treasury Department, all of the proceeds of the sales of the stamps, whether such sales, as is generally the case, occurred in the Philippine Islands or, in a small proportion of the imports, the sale and affixing of the stamps occur while the articles are in the custody or control of the customs officials, are deemed collected "for account of the Philippine Islands," and are not treated as United States revenues.

It is therefore perfectly plain that, though measured by the amount of internal revenue taxes on like articles made within the United States, these taxes on Philippine products exported from the Philippines into the United States, are exactly of the nature of the taxes which were sustained in *Downes* v. *Bidwell* (supra), not as an exercise of the taxing power under the taxation and revenue clauses of the Constitution, but as an exercise of the power of Congress to legislate for and over the Philippine Islands, and, that the statement in these tariff acts that these taxes are collected for the account of the Philippine Islands and shall be paid over to the government of those Islands, is a logical consequence of and in full conformity with the decision of this Court in *Downes* v. *Bidwell* (supra) and in the reaffirmations and interpretations thereof in *Dorr* v. *United States* (supra) and subsequent cases.

So these Philippine provisions of the Tariff Acts cited by the Government's attorneys are not precedents for the processing taxes imposed in the Revenue Act of 1934 on the use of Philippine coconut oil in purely internal manufacturing operations within the United States; quite the contrary. The *Report of the Special Investigation Commission* which President Harding sent to the Philippine Islands in 1921, states:

> "The Philippine Islands, contrary to general belief, have maintained all the expenses of civil administration since the beginning of American occupation *from in-*

sular revenues and without assistance from the Treasury of the United States. . . ." (Italics ours.)

At the time this statement was made, two of the tariff statutes cited by the Government's attorneys, namely the 1909 and 1913 statutes, had been in full force and effect. Obviously, the taxes imposed in those acts on Philippine products imported into the United States were not United States revenues, but insular revenues, and the transmission of the proceeds thereof to the Philippine Islands was not from the Treasury of the United States. That statement was correct, and the same statement made today, after the 1922 and 1930 tariff acts, would be wholly correct. The Philippine coconut oil provisions of the Revenue Act of 1934 which are before this Court in this instant case constitute the first attempt ever made to tax persons or transactions within the United States for the Philippine treasury or government.

The Philippine coconut oil provisions of the Act of 1934 were not, therefore, within the scope and meaning of the taxing powers of Congress as granted in Clause 1 of Section 8 of Article I of the Constitution. The said provisions of the Act of 1934 place a burdensome imposition on one group of the citizenry of the United States for payment exclusively into the treasury of and within the unconditional control of a government which is not the government of the United States and which is the government of a locality which was not a part of the United States.

II.

The Philippine coconut oil provisions of Revenue Act of 1934 violate the Fifth Amendment.

The Philippine coconut oil provisions of Section 602½ of the Revenue Act of 1934 place upon a group of American

manufacturers who use Philippine coconut oil an arbitrary and heavy burden, for a purpose which is not only outside the scope of the federal taxing power, but is one with which the group selected to bear the burden has not such relationship as gives the selection an iota of reasonableness or the imposition an iota of reasonableness; and for this reason they violate the due process of law clause of the Fifth Amendment.

There have been expressions in court opinions to the effect that the due process of law clause of the Fifth Amendment is not applicable to tax laws. We believe, however, that any such statement is too absolute and too sweeping, and that, beyond and in addition to the invalidity of a purported exercise of the taxing power by reason of its being beyond the scope of that power as granted by the Constitution, its invalidity may be produced or strengthened, so to speak, by the prohibitions of the Fifth Amendment.

In Brushaber v. *Union Pacific Railroad Co.*, 240 U. S. 1, this Court held that while the due process clause of the Fifth Amendment is not a limitation upon the taxing power of Congress, in other words, that the Constitution does not conflict with itself by conferring a taxing power, on the one hand, and taking the same power away, on the other hand, by the provisions of the due process clause, nevertheless, in the words of the opinion (pages 24-25):

> "... this doctrine would have no application in a case where, although there was a seeming exercise of the taxing power, the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation, but a confiscation of property; that is, a taking of the same in violation of the Fifth Amendment; *or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion.*" (Italics ours.)

This quotation applies to the Philippine coconut oil tax. To pick upon one group of American manufacturers for an enforced, large and burdensome contribution into the Philippine treasury is grossly and patently arbitrary.

1 Willoughby on the Constitution, p. 584, states:

> "Though the taking of the property in the form of a tax is thus not in itself a taking without due process, it may become such by reason of the purpose for which . . . the tax is levied, assessed and collected."

We do not claim, of course, that the excessiveness or burdensome or even ruinous effect of a tax is, in and of itself, a decisive factor of invalidity. What we desire to lay before the Court is that one group of the population is selected as the victim of an exceedingly burdensome, indeed, in the case of plaintiff, a ruinous tax burden, for a purpose entirely distinct from and which has nothing to do with the support of the government of the United States, and has no relationship whatever to any direct or any special benefits to the group required to make the contribution; and that this produces that degree of arbitrariness and, in the above-quoted language of this Court, that gross and patent inequality from which the Fifth Amendment is intended to protect.

The Government's attorneys argued below that the American processors of coconut oil are the proper subject of a tax for the Philippine treasury as they are the beneficiaries of the payment into the Philippine treasury because the coconut oil, which is important to the business of those processors, is produced in the Philippine Islands. On its face, this contention is so far-fetched as to seem unworthy of comment or analysis.

Coconut is not even the chief agricultural product of the Philippine Islands. In its volume or value it is enormously

exceeded by both rice and sugar, and indeed in 1934, the year in which the statutory provisions under discussion were enacted, coconuts constitute but 7.7% of the agricultural products of the Islands. Furthermore, a considerable portion of the coconut crops is used by the Philippine people themselves or sent to other countries than the United States. Besides, the economic activities of the Philippine people is by no means restricted to agriculture, but include manufacturing, mining, lumbering and all the various kinds of civic, professional, cultural, trade and the many other activities in which a nation of 13,000,000 people naturally engage. Furthermore, coconut oil and other coconut products do not constitute by far all of the imports of the United States from the Philippine Islands; indeed, it is not the chief import, the chief import being sugar.[1]

These facts show how arbitrary, unreasonable, unfair, discriminatory, and therefore violative of the intention of the Fifth Amendment, are the Philippine coconut oil provisions of the Revenue Act of 1934 which exact exclusively from the group of American manufacturers who happen to use Philippine coconut oil, the entire fund of which is to be transmitted to the Philippine treasury.

If a tax on the use of an imported material for the treasury of the government of the country in which that material was originally grown could be sustained on the theory that the domestic users of that material benefit by the increased amount in the treasury of that government, then a tax, for instance, on American shoemakers who use Argentine hides, the proceeds to go to the Argentine treasury, would be constitutional; or, to take an illustration from the oils which are mentioned in Section 602½ of the Reve-

[1] Detailed statistics and discussions of Philippine economic and United States-Philippine trade will be found in United States Tariff Commission Report No. 118, Second Series, on United States-Philippine Trade, and in Chapters 3 and 4 of a book entitled "Philippine Independence" by Grayson L. Kirk (1936).

nue Act of 1934, a tax on American manufacturers who use palm oil, the proceeds to go to the government of the Netherlands from wh[illegible]e possessions palm oil comes, would become constitutional. The theory is obviously untenable.

Besides, the Philippine legislature is free to expend the moneys for purposes which have not the remotest relation to coconuts or its products or even for purposes harmful to American processors.

The conclusive and inescapable fallaciousness of the Government's contention in regard to the Philippine coconut oil provisions of the Revenue Act of 1934, is that those provisions themselves prohibit the use of the money for the benefit of the Philippine coconut growers. The very purpose and intention of those provisions was to harm the Philippine-United States coconut oil trade, which means to harm every link in the chain of that trade from the Philippine coconut grower to and through the dealers, importers, processors and beyond. Injury to the Philippine coconut oil growers and to the American users of that oil was the purpose of the tax, a purpose which will no doubt be increasingly and progressively accomplished if those provisions be permitted to remain in effect. They certainly had an excessively damaging effect upon the petitioner, and no doubt upon other processors; and the paying of the proceeds of the tax into the Philippine treasury can be of no help or compensation to the petitioner or its fellow contributors to those proceeds.

III.

The provisions levying the tax and the provisions placing the proceeds in the Philippine treasury are not separable.

The attorneys for the Government contended below that the provisions of Section 602½ of the Revenue Act of 1934 which imposed 3 cents a pound on the domestic processing

of coconut oil and the provisions which specified what shall be done with the proceeds of the tax are so separable, that the latter can be utterly eliminated and ignored and the former sustained as simply a levy of a tax.

For convenience it would be well to set out here again the statutory provisions in question:

> *Section 602½ (a)*—
>
> "There is hereby imposed upon the first domestic processing of coconut oil . . . a tax of 3 cents per pound, to be paid by the processor. . . . All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."
>
> . . . . . .
>
> "(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

From the face of these provisions, it is quite obvious that the part regarding the imposition and the part regarding the collections and the payment thereof into the Philippine treasury are so intertwined and integrally related, are so much the parts of one unitary whole, that separation would inevitably destroy the legislative intent as expressed in the statute itself and, in the language of the opinion in *Railroad Retirement Board* v. *Alton R. R. Co.*, 295 U. S. 330, would produce "an effect altogether different from that sought by the measure viewed as a whole." This is corroborated by the history of these provisions, which history demonstrates beyond any doubt that Congress would not have included the levy in the Revenue Act of 1934 with-

out attaching thereto provision for transmitting the collections to the Philippine treasury.

In the Appendix, pages 51 to 55, the legislative stages of Sections 602 and 602½ are set forth with the phraseology of the relevant provisions of those sections at the different stages.

The hearings of the Ways and Means Committee preceded the introduction of the bill in the House, and evidently those hearings were upon a draft prepared by the Treasury Department and the heads of the House and Senate Committees. It contained no section whatever on oil processing taxes, and such a section was first produced by the representatives of the dairy and other interests who were producers of domestic fats and oils. The Committee incorporated that section into the draft of the bill as Section 602, which provided for processing taxes on various oils, including coconut oil, but contained no reference to or special provisions concerning Philippine coconut oil. Subsection (g) of said Section 602 specified that "all collections under this section shall, notwithstanding any other provision of law, be covered into the general fund of the Treasury of the United States." Up to the time when, as will be presently described, the Senate inserted the amendment for the payment of the coconut oil tax on Philippine coconut oil into the Philippine treasury, this subsection (g) remained as above quoted. When the amendment regarding payment of the collections into the Philippine treasury came later to be made, then an adjusting amendment was placed in subsection (g), which then came to read: "*All collections, except as provided in subsection (a) under this section* shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States." (Italics ours.)

The Philippine Independence bill was pending at the same time. All of the matters to be covered by that bill

had been practically agreed upon between the President and the others who represented the United States in negotiations and the representatives of the Philippine Islands, excepting only the matter of United States military reservations and naval bases in the Philippines. One of the settled matters was that of the quota of Philippine coconut oil imports which were to be admitted free of duty during the period from the enactment of the Independence Act and the grant of complete independence. This quota was fixed at 200,000 long tons or 448,000,000 pounds, which was an amount somewhat larger than the then amount of annual importation though considerably less than the amount of importation during the preceding period of prosperity. This quota provision is Section 6-(b) of the Independence Act and will be found on page 22 of the Appendix. The 1934 Revenue bill was still pending in its original form at the time the Philippine Independence Act was passed and accepted by the people of the Philippine Islands. This accentuated the fact that Section 602 as passed by the House and pending in the Senate would be a breach of faith on the part of the United States, a breach of the intention and spirit of the agreement between the United States and the Philippine people embodied in the Independence Act.

The Senate Committee on Finance made some amendments, but none which contained any mention or reference to Philippine coconut oil.

When the bill reached the Senate floor, the opposition to taxing Philippine coconut oil became keener, and almost at the beginning of the discussion Senator Harrison expressed his belief that President Roosevelt would veto the entire revenue act if that tax remained in the measure, and he read to the Senate a letter written to him by President Roosevelt, which said:

> "I am advised that H. R. 7835, the revenue bill, now under consideration before your committee, con-

tains a provision imposing an excise tax on coconut oil.

Now that the Philippine independence bill has been approved, and insofar as the United States is concerned represents definite commitments to the government and the people of the Philippine Islands, the provisions of Section 6 will govern future trade relations with the Islands. Paragraph (b) of this section contemplates that there shall be no restriction placed upon Philippine coconut oil and copra coming into the United Sfates until after the inauguration of the government of the Commonwealth of the Philippine Islands. It is my view that the imposition of an excise tax on coconut oil would be a violation of the spirit of this section of the independence act, and that such provision should be eliminated from the revenue bill.

May I respectfully suggest that your committee be advised of the language which I used in regard to the economic phase of the independence bill in my recent message to the Congress."

Congressional Record 73 Congress, Second Session, Vol. 78, Part 6, p. 6317.

At the same time Senator Harrison stated to the Senate that he had also received letters from the Secretary of State and the Secretary of War disapproving any such tax on Philippine coconut oil. It was subsequent to the disclosure of these letters and subsequent to a bitter opposition to the tax expressed on the floor of the Senate, that Senator Norris introduced the amendment to Section 602 (there was as yet no 602½) which provided that the entire collections on Philippine coconut oil shall not go into the United States Treasury but shall be paid over bodily to the Philippine treasury, and that such transmission to the Philippine treasury shall terminate if and when any subsidy should come to be granted by the Philippine government to producers of the oil. Senator Norris' amendment was adopted by the Senate and constitutes the very provisions with which this instant case is concerned. In supporting

his amendment, Senator Norris said—"We shall have not taken a penny of the money ourselves."

The House refused to concur in this amendment and the bill was sent to a conference committee, which committee retained the amendment. The report of the conference committee will be found in Vol. 78, Congressional Record (73rd Congress, 2nd Session), p. 7815, and the introduction of the Norris Amendment in the same volume, Part 6, p. 6380. The discussion in the Senate, including Senator Norris' explanation of the amendment, will be found in the same volume, pp. 6308-6325, 6380-6389, and significant portions thereof have been set forth in the Appendix, p. 43. It was quite apparent that a tax on Philippine coconut oil could not pass without that amendment; so the House accepted the conference committee report.

No one could read the legislative history of this bill without becoming convinced beyond a doubt that a tax on the processing of Philippine coconut oil for United States revenue would have had no chance of passage by Congress. It would be impossible to find legislation more integrated and inseparable in purpose and intent than are the provisions of Section 602½ of the Revenue Act of 1934 relating to the processing tax on Philippine coconut oil and the disposition of the proceeds thereof. The legislative history of the bill corroborates what is apparent upon the face of the measure, that the levy and collection of the tax *for the Philippine treasury* were parts of an integral, inseparable whole.

The expressed purpose of an exercise of the taxing power is one of the decisive factors in the determination of its constitutional validity. In James M. Gray's "Limitations of Taxing Power and Public Indebtedness," page 347, the author says:

> ". . . It may also be said that the purpose of the taxing, whether public or not, and hence whether 'for

> the common defence and general welfare,' is to be determined by inquiring as to the use to which the proceeds of the tax are put; . . ."

Any and every tax or imposition, when collected, produces moneys. It is always physically possible to take a pair of scissors and cut out every portion of a statute which has to do with the purpose of the tax and the use of its proceeds, and there will always remain a provision which, if enforced, will produce money. If that were the test, there would seldom, if ever, be a case in which a court would consider the purpose or objective of the tax as bearing on its validity. But courts constantly entertain and decide issues as to the effect of the purpose of the tax or use of its proceeds upon the validity thereof, as illustrated by cases on bounties or subsidies or the bank note or child labor tax cases or state legislation levying taxes for railroad aid or aid to manufacturing establishments. The test is, of course, not the physical separability of the words of the statute which make the imposition from the words which state the purpose of the imposition or what is to be done with the proceeds. The test is whether the exaction and the expressed purpose thereof are integral parts of a unitary legislative plan and of a connected legislative intention.

The same contention of separability was advanced by the Government in the case of *U. S.* v. *Butler*, 297 U. S. 1 (p. 58), and overruled by this Court in these words:

> ". . . The Government in substance and effect asks us to separate the Agricultural Adjustment Act into two statutes, the one levying an excise on processors of certain commodities, the other appropriating the public moneys independently of the first. Passing the novel suggestion that two statutes enacted as parts of a single scheme should be tested as if they were distinct and unrelated, we think the legislation now before

> us is not susceptible of such separation and treatment. The tax can only be sustained by ignoring the avowed purpose and operation of the act, and holding it a measure merely laying an excise upon processors to raise revenue for the support of government."

The dissenting opinion in the Butler case did not separate the levying provisions from the expenditure provisions and save the former by throwing out the latter. It recognized them as a single plan and deemed the whole plan to be constitutional.

Every word of the above quotation from the Butler case is applicable here. This Court could not sustain the levy and ignore the transmission of the proceeds to the Philippine treasury without holding that the provisions of Section 602½ relating to Philippine coconut oil constitute a measure for collecting money for the financing of the activities of the United States government, which would fly in the face of the fact that Congress expressly provided that not one penny shall be used for the support of the United States government or by the United States government.

The Revenue Act of 1934 provided for many kinds of taxes on many kinds of subjects of taxation, but contains no provisions for sending the proceeds other than to the General Treasury, excepting only the provisions relating to Philippine coconut oil. Congress knew what it was doing. It was not raising revenue for the support of the United States or the financing of the activities of the government of the United States when it imposed this levy upon Philippine coconut oil. It did not want to collect revenue for the United States from Philippine coconut oil for the reason that such a desire would intensify the violation of the intention and spirit of the Philippine Independence Act which had just been put into effect by the acceptance thereof by the people of the Philippine Islands. The government's claim of separability is tantamount to asking this Court

to enforce a greater breach of the honor of the United States than Congress was willing to commit.

The Government's attorneys, in their argument below, calling attention to the provision that the transmission of the moneys to the Philippine treasury shall cease if and when the Philippine government subsidizes the producers of coconut oil, contended that in such an event the tax will still be collected and would then be valid as a simple excise tax for revenue available for ordinary expenditures for the activities of the United States Government.

A complete answer to this contention is that the Philippine Commonwealth has not granted any such subsidy and the refund sought in this instant case is of a payment which necessarily antedated any such subsidy. In its more general aspects, however, the contention is completely erroneous. There is no provision in the Act specifying that, in case the Philippine Commonwealth grants said subsidy, thenceforth the collections on Philippine coconut oil shall be covered into the general fund of the United States treasury and be available for appropriations made by Congress. If the transmission to the Philippine government should terminate by reason of a Philippine subsidy to coconut growers, the proceeds of the tax collected thereafter would not, under the phraseology of the Act of 1934, necessarily go into the United States Treasury. A new act of Congress would be required for the disposition of those proceeds. When, therefore, the Government asks this Court to cut out from the statute the vital provisions regarding the transmission of the moneys to the Philippine treasury, it is asking this Court not only to drop out words which are now in the statute but to insert something into the statute which is not now there. That something requires a legislative, not a judicial, act.

The Government's attorneys ask the Court to assume that Congress, when faced with the necessity of determin-

ing this future legislative question, would decide in favor of the continued collection of the tax. There is not basis for any such assumption. We have seen that the provision for transmitting all collections to the Philippine treasury and prescribing that these collections shall not go into the United States Treasury were inserted when the President called the attention of Congress to the fact that the tax itself would be a breach of the spirit of the Philippine Independence Act. It was not within the power of the President to veto this particular feature of the Revenue Act; but immediately after the enactment of the statute; he wrote to Congress asking for repeal of all the provisions of the Act regarding Philippine coconut oil; and, if the unlikely event of Philippine subsidy to the coconut growers should come to be made, Congress is at least as likely to choose the repeal of the tax as to choose to violate the Independence Act without the palliating provisions for transmitting the proceeds to the Philippine treasury. At any rate, the validity of an existing statute cannot turn upon assumptions concerning a future statute not yet enacted; and certainly a court does not and would not take unto itself the legislative power to amend the existing statute and enact a different one; which is exactly what the Government's attorneys ask this Court to do when they contend that, if and when a Philippine subsidy to coconut growers terminates the transmission to the Philippine treasury of the moneys thereafter collected from the processing of Philippine coconut oil, those moneys will be sent into the general fund of the United States Treasury for use under general appropriation measures.

The Revenue Act of 1934 contains the conventional separability or saving clause. As has been frequently held by the courts, however, this savings clause decides no question of separability; for despite its presence in a statute, there still remains the question whether one part of the statute

is so completely unrelated, independent and distinct in the legislative intent from another part, that the court, when determining interpretation or validity, may utterly ignore the one part as though it did not exist.

A recent opinion of this Court defines the rules of construction as to the separability of one part of a statute from another part of the same statute, namely, in *Railroad Retirement Board* v. *Alton R. R. Co., 295 U. S. 330,* as follows:

> "The statute contains a section broadly declaring the intent that invalid provisions shall not operate to destroy the Act as a whole. Such a declaration provides a rule which may aid in determining the legislative intent, but it is not an inexorable command. It has the effect of reversing the presumption which would otherwise be indulged of an intent that unless the act operates as an entirety it shall be wholly ineffective, but notwithstanding the presumption in favor of divisibility which arises from the legislative declaration, *we cannot rewrite a statute and give it an effect altogether different from that sought by the measure viewed as a whole.* In this view we are confirmed by the petitioner's argument that as to some of the features we hold unenforcible it is 'unthinkable' and 'impossible' that the Congress would have created the compulsory pension system without them. They so affect the dominant aim of the whole statute as to carry it down with them.' " (Italics ours.)

The Government is asking this Court to do exactly that which this Court, in the foregoing quotation, stated a court should not do, namely, rewrite the Philippine coconut oil provisions of the 1934 Revenue Act so as to give an effect altogether different from that sought by those provisions viewed as a whole.

A decisive case on this question is *Hill* v. *Wallace, 259 U. S. 44,* which invalidated a federal statute purporting to tax contracts in grain futures. This Court pointed out that the part of the statute levying an excise tax on certain

classes of transactions might, in and of itself, be valid, but refused to consider that such a question was before the Court, which of course it would have been if the tax levy part of the statute could be separated from the rest of the statute. The statute contained the customary separability section.

The case of *Chicago Motor Club* v. *Kinney*, 329 Ill. 20, dealt with a statute imposing taxes on distributors of motor vehicle fuels. The statute apportioned the proceeds of the tax amongst various funds and purposes. The court found this apportionment to be unconstitutional; whereupon the state's attorneys set up the contention that, if these apportionment provisions be separated from the tax levy and other provisions, these latter could be upheld as valid in and of themselves. The Court rejected this contention, saying:

> "Eliminating from the Act the void sections 6, 7 and 10, we have an act which imposes a tax upon all distributors of all fuels suitable and practicable for operating motor vehicles, excepting kerosene, and places all of the fund in the state treasury known as the road fund. . . . Such an act is not the act that was passed by the General Assembly, and it is evident that the Act would not have been passed without Sections 6 and 10, where the different objects of an act are so dependent upon or so mutually connected with each other in meaning or as conditions, considerations or compensations for each other that it cannot be presumed the legislature would have enacted the provisions designed to secure one of the objects without the provisions for the other. The invalidity of the latter renders the whole act void."

There is no need to discuss the cases cited below by the Government; for in none of them was a statute levying a tax for an expressed purpose or use converted into a simple tax for revenue by the process of using the scissors and

cutting out those of the integral portions of the statute which provide for what the money is to be collected and where it is to go. We do not believe that any such case exists; nor, in the case of any statute which both levies a tax and specifies the purpose or use to which the entire proceeds are to be applied, can we conceive of any court's eliminating or ignoring the provisions concerning purpose or use and enforcing the levying provision. If the purpose or use be eliminated, then the tax would necessarily be collected either for a different purpose or use or for none at all. That would not be separating one part of the statute from another; that would be amending or destroying the measure.

IV.

The tax is not sustainable as a tax on imports of coconut oil from the Philippine Islands, for it is not an import tax.

The tax is not levied upon imports of coconut oil from the Philippine Islands nor collected upon imports nor from imports nor from importers. As stated in the petition and admitted by the Government's demurrer, some of the coconut oil imported from the Philippines is not processed in the United States and therefore not subject to this imposition. There is no collection at the places of import, and it is not the importation but the later use of some of the imported oil upon which the levy is imposed. Both the importation from the Philippine Islands and the interstate commerce in the oil are completely terminated before any processing begins. If any of the imported oil were lost or destroyed, there would be no tax on it. Here Congress was not engaged in laying any exaction upon imports, but upon the exclusively domestic transaction of using the oil in domestic manufacturing. The statute itself designates "*domestic processing*" as the subject of the tax.

That Congress knew the difference between an import tax and a processing tax and designed section 602½ of the 1934 Revenue Act to provide for processing taxes and not import taxes, is shown by the history of the provisions of Section 602 and 602½ of the Act as set forth in the Appendix, p. 51. The original section 602 dealt exclusively with processing taxes; not only on coconut oil but on several other classes of imported oils (sesame oil, palm oil, etc.). The settled policy not to levy the regular customs duties on Philippine products and the complications involved in levying customs duties on the other oils, were, no doubt, considerations which caused the dairy and other domestic oil interests who wrote the section and the Ways and Means Committee which adopted it to avoid using duties or import taxes.

In the course of the debates there was brought to the attention of Congress that there were certain other oils imported into the United States and competing with domestic oils to which such considerations or reasons were felt not to apply, as, for instance, whale oil, fish oil and marine animal oil. So, in the process of revamping the oil tax provisions, all of the taxes which were to be domestic processing taxes were placed in a section which came to be numbered section 602½, while under the original number 602 a tariff or customs duties were placed upon imported whale, fish and marine animal oils. The distinction between the two types of subjects, namely imports, on the one hand, and domestic processing, on the other, was carefully preserved by including in section 602 those oils on which an import tax was to be imposed and in section 602½ those on which a domestic processing tax was to be imposed.

Furthermore, if Section 602½ imposed an import duty on Philippine coconut oil, as said section was enacted by Congress after the enactment of the Philippine Independence Act, it would repeal Section 6-(b) of the Independence

Act, which fixes a quota below which Philippine coconut oil shall be free of duty. Certainly Congress intended no such result.

The processing taxes imposed by Section 602½-(a) of the Revenue Act of 1934 are not specified to be import taxes, are not intended to be import taxes and are not levied on imports.

V.

The tax is not sustainable as a regulation of foreign or Philippine-United States commerce.

The Government's attorneys argued below, that, even though not sustainable as a tax measure, the exaction on the use of Philippine coconut oil by the American manufacture of soap, oleomargarine and other domestic products, though such use occurs after the oil has ceased to be an article in foreign or interstate commerce, can be upheld as a regulation of foreign commerce or of commerce on the seas.

One question which naturally arises is whether the Philippine Islands are a foreign country and whether commerce between the Philippine Islands and the United States is foreign commerce within the foreign commerce provisions of the Constitution. The power to regulate Philippine-United States commerce is derivable, under the principles developed in the Insular Cases, from the war and treaty power to acquire territory and possessions, and possibly from the so-called territories clause, namely Section 3 of Article IV, of the Constitution. And our imagination has great difficulty in picturing the caldrons in a Dayton, Ohio, soap manufacturing plant as a part of the high seas.

But granting that Congress has power to regulate commerce between the Philippine Islands and the United States, there is and can be no validity whatever in the Government's argument that a tax on the use of a material

in a purely internal, indeed intrastate, manufacturing process is sustainable as an exercise of the regulation of commerce in that material even after all commerce in it has completely terminated.

A simple and complete answer to that contention is that the tax on the domestic use of Philippine coconut oil in domestic manufacturing, as imposed in Section 602½ of the Revenue Act of 1934, is not intended to be and is not a regulation of commerce between the Philippines and the United States.

In *Hill* v. *Wallace*, 259 U. S. 44, invalidating a statute taxing grain future contracts, the Government sought to advance the same argument that that statute, though entitled a tax statute and imposing what were designated as taxes, might be sustained as an exercise of the power to regulate interstate commerce. This Court rejected that contention, saying, amongst other things (p. 69):

> "A reading of the Act makes it quite clear that Congress sought to use the taxing power to give validity to the Act. It did not have the exercise of its power under the commerce clause in mind, and so did not introduce into the act the limitations which certainly would accompany and mark an exercise of the power under the latter clause."

As we have seen, the tax is not levied upon all coconut oil imported from the Philippines. As we have seen, Congress placed in section 602 its protective duties on certain imported oils, while in section 602½ it restricted itself to taxing a manufacturing process which does not and cannot begin until after all foreign and interstate commerce in the oil has completely ceased and terminated.

The Government's contention would wholly destroy all constitutional distinction between foreign and domestic commerce and between interstate commerce and intrastate production. The federal commerce power is necessarily

subject to those limitations which are implied in the words "foreign," "interstate" and "commerce," as well as to the express limitations specified in the Fifth and Tenth Amendments.

Of course, the imposition of a tax cannot find its constitutional basis as a mode of exercising the power of regulation unless the power of regulation itself exists, and, if the power of regulation itself exists, it may be exercised by any of the other modes by which regulation is exercised. If a transaction be within the scope of the regulatory power, then any and all the forms or modes of regulation may be used; but, if the transaction be not within the field of the regulatory power, then no form or mode of regulation, whether it be by taxes or other forms or modes, may be used. If the process of manufacturing soap is a subject matter falling within the scope of the federal commerce regulatory power, then regulation of the ingredients which may be used, of the labor which may be used and of every other part of the process would come within the field of federal legislative power to the same extent as would taxation as a mode of exercising that power; with the consequence that where taxation of a specific subject-matter could be sustained as an exercise of the regulatory power, the regulation of materials, labor and every other part of the same subject-matter would necessarily also fall within the scope of the same power. If, therefore, the taxation of the process of making soap or making oleomargarine could derive its validity from its being the exercise of the power to regulate, there would exist equally the power to regulate any of the materials to be used in that process or any of the labor to be used in that process or any other phase of the operations of that process.

Unless, therefore, everything that is concerned in the process of manufacturing soap, oleomargarine, etc., falls within the scope of the federal commerce regulatory power,

no tax of that process or any part thereof or the use of any material therein can derive its constitutional validity from the commerce power. Any definition of the commerce power which includes purely intrastate manufacturing, which cannot and does not begin until all foreign and interstate commerce is over, can have no validity without destroying all distinction between federal and state fields of action.

In *Second Employers' Liability Cases*, 223 U. S. 1, referring to the power to regulate interstate commerce, this Court said of the federal regulatory power (p. 47):

> "This power over commerce among the States so conferred upon Congress, is complete in itself, extends incidentally to every instrument and agent by which such commerce is carried on, may be exerted to its utmost extent over every part of such commerce, and is subject to no limitations save such as are prescribed by the Constitution. *But, of course, it does not extend to any matter or thing which does not have a real or substantial relation to some part of such commerce.*" (Italics ours.)

Similarly, in *Adair* v. *U. S.*, 208 U. S. 161 (p. 178):

> ". . . Manifestly any rule prescribed for the conduct of interstate commerce, in order to be within the competency of Congress under its power to regulate commerce of the states, must have some real or substantial relation to or connection with the commerce regulated . . ."

The use of an oil in the manufacturing within a state of a product such as soap or oleomargarine, which oil has entirely completed its foreign commerce stage and its interstate commerce stage, has arrived at and been stored in a receptacle owned by the manufacturer and constituting a part of his own plant and has been drawn out from that receptacle into the caldrons or other apparatus forming a

part of that plant, at which point the regulatory mandate or tax first begins to apply, cannot be foreign, interstate or any other commerce but is entirely an intrastate, non-commerce transaction.

See *Nashville etc. Railway Co.* v. *Wallace*, 288 U. S. 249, 265-8, concerning the validity of a tax imposed by the State of Tennessee on the storage of gasoline and the withdrawal of such stored gasoline for use or sale. The following are passages in which this Court stated the question and its decision thereon:

> "Appellant, an interstate rail carrier, purchases large quantities of gasoline outside the State of Tennessee and brings it into the state in tank cars, from which it is unloaded and placed in its own storage tanks. None of it is sold by appellant, but all is withdrawn and used by it as a source of motive power in interstate railway operation in Tennessee, Kentucky, Alabama and Georgia. Storage of the gasoline is a preliminary step to such use in interstate commerce. The tax is assailed both on the ground that it is imposed on the gasoline while still a subject of interstate commerce in the course of transportation from points of origin to points outside the state of Tennessee; and on the ground that it is in effect a tax upon the use of gasoline in appellant's business as an interstate carrier, and is thus an unconstitutional burden on interstate commerce.
>
> The gasoline, upon being unloaded and stored, ceased to be a subject of transportation in interstate commerce and lost its immunity as such from state taxation. . . . The oil in storage was not a subject of interstate commerce and so was a part of the common mass of goods within the state, subject to local taxation. . . ."

In that case much of the oil, when withdrawn from the Railway Company's storage tanks, would actually, still in its unused state, enter into interstate commerce; despite which this Court held the state had a right to tax the stor-

age and withdrawal from storage, as the oil was not a subject of interstate commerce while in the storage tanks or thereafter until it should actually again enter the stream of interstate commerce. In the case at bar, the coconut oil in petitioner's tanks or while in the course of being used in the manufacturing process in petitioner's manufacturing plant was certainly not an article of commerce subject to the commerce power.

The Government's attorneys point out that the power to regulate foreign commerce includes the power to determine what may be carried in foreign commerce, that is, what may be imported into the United States, and should therefore be held to include the lesser restraint on importation which is effected by means of a tax on the imported articles. If the point is claimed to demonstrate that the United States may regulate anything, however intrastate in nature, where the regulation thereof indirectly affects the amount of importation of articles from other countries, then its fallaciousness is certainly too obvious to require much examination. Just because the United States may exercise its commerce power for the purpose of reducing imports of designated articles, it does not follow that the United States may, for the same purpose, exercise a power which it does not possess. Its field of regulation is limited and terminates at the point where commerce, as interstate or foreign commerce, has terminated or is no longer directly involved. Quite probably a tax on the use of coconut oil in the soap manufacturer's caldrons in the process of making soap has a tendency to reduce the importation of that oil. The same would be equally true of a tax on the sale of that same soap. The same would be equally true of a tax upon the use of that same soap by the ultimate consumer. The same coconut oil which was in the storage tank and then in the caldron, will be in the soap when sold or the soap when used. The coconut oil is as completely beyond the course

of foreign commerce when it reaches the soap manufacturer's caldrons and as completely within the state and part of the mass of intrastate merchandise as it ever will be later. If the possibility of indirect effect on the volume of foreign commerce, as distinguished from the nature of the subject matter on which the regulation (or tax) is imposed, could be held to determine the definition of the scope of federal regulatory power, then the federal government could regulate any and every transaction, however local and intrastate may be its nature, which has to do with an article which contains any material originally imported.

But, more than that, if the power to regulate foreign commerce includes the power to regulate, by taxation or other modes, any intrastate manufacturing process which uses an imported article, then it would logically follow that the power to regulate interstate commerce includes the power to regulate, by taxation or other mode, any manufacturing process or other transaction within any state in which any material coming from any other state or states is used. As substantially all manufacturing or selling or other transactions, however intrastate or local they may be, use or are concerned with articles which contain ingredients or materials which come from either foreign countries or other states, or both, the result of such a process of reasoning would utterly destroy all constitutional limitations of the federal commerce power.

The Government's argument is effectively disposed of in the recent leading case of *Schechter* v. *United States,* 295 U. S. 495. That case was concerned with an attempted regulation of the slaughter of poultry in New York City. Certainly manufacturing soap is as intrastate as the slaughter of poultry. It was shown in that case that 96% of the poultry marketed in that city comes from states other than New York, and that three-fourths of these imports from other states were consigned to the commission

merchants who sell them to the slaughterers. In that case the Government advanced the same argument as it has done in the case at bar, seeking to justify the exercise of federal regulatory power by reason of the indirect effects which the regulation of the intrastate transactions has upon the volume or character of interstate commerce in the articles used, processed or sold in the intrastate transactions. As to this argument, this Court, speaking through Chief Justice Hughes, said (p. 546):

> ". . .In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they 'affect' interstate commerce, there is a necessary and well-established distinction between direct and indirect effects. The precise line can be drawn only as individual cases arise, but the distinction is clear in principle. Direct effects are illustrated by the railroad cases we have cited, as, e. g., the effect of failure to use prescribed safety appliances on railroads which are the highways of both interstate and intrastate commerce, injury to an employe engaged in interstate transportation by the negligence of an employe engaged in an intrastate movement, the fixing of rates for intrastate transportation which unjustly discriminate against interstate commerce. But where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority would embrace practically all the activities of the people and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control. . . ."

If, as is unquestionable, the constitutional validity of a tax as a mode of the exercise of the power of regulation

requires that the subject matter be within the constitutional scope of the power of regulation, surely it is equally true that the mode itself, that is, the exercise of the taxing power, must be within the constitutional scope of the taxing power. An unconstitutional tax surely does not become constitutional by being used or claimed to be used as a mode of exercising some other power.

Certainly the power of the United States as the possessor of the Philippine Islands does not permit an invasion of the fields which are constitutional state fields. See *Kansas* v. *Colorado*, 206 U. S. 46.

VI.

The Philippine coconut oil provisions of Section 602½ of the Revenue Act of 1934 represent a plan for regulating intrastate manufacture of soaps and intrastate production of domestic oils.

Why did Congress wish to impose a heavy burden upon a group of American soap and other manufacturers and at the same time exclude the United States from any revenue therefrom? The statutory provisions contain on their face an indication of the answer to this question; for the provision terminating the transmission of the moneys to the Philippine Commonwealth, if and when that Commonwealth grants a subsidy to Philippine coconut oil producers, indicates that the purpose or objective of these provisions was the placing of Philippine coconut oil at a disadvantage as compared with competitive domestic products and thereby affecting the types of oil used by American soap and other manufacturers and the volume of oils produced in the United States or the prices at which they could be sold or both.

This indication from the face of the statute is completely verified by the legislative history of Section 602½ of the Revenue Act of 1934, which shows that the inclusion of

a tax on Philippine coconut oil was at the instance of the producers of certain domestic fats and oils, namely, lard, cottonseed oil, tallow, soybean oil, fish oil and butter. They sought and obtained the inclusion of the tax as a means whereby the parity which Congress had established in the Agricultural Adjustment Act for other agricultural products might be obtained for their domestically produced oils and fats.

As we have seen, there were no oil processing taxes in the revenue bill prepared by the Treasury Department, and by those who cooperated in its preparation. A provision for such taxes was first presented by the domestic oils and fats representatives at the hearings before the Ways and Means Committee. The hearings on this subject will be found in *"Revenue Revision, 1934, Hearings before the Committee on Ways and Means, House of Representatives, 73 Congress, 2d Session,"* pages 579 to 722, and in *"Revenue Act of 1934—Hearings Before the Committee on Finance, U. S. Senate, 73d Congress, 2d Session on H. R. 7835,"* pages 247-472. The participants consisted both of representatives of the industries which used the imported oils and the representatives of the dairy and allied industries who were promoting the processing tax. The question of United States revenue or the needs of the Treasury was conspicuous by the absence of any mention thereof.

The entire debate in the House was concerned not with revenue but with the benefit which would accrue to the American farm and dairy interests through the higher prices and lessened use of the imported oils. (This discussion may be found in Congressional Record, 73rd Congress, 2d Session, Vol. 78, Part 3, pages 2512 and 2513; 2524; 2528 to 2532; 2535 and 2536; 2599 to 2600; 2611 to 2616; 2642; 2682; 2683; 2692 to 2702; 2770 and 2771; 2783 to 2786; 2790 to 2797; 2800 and 2801; 2804; 2809; 2890 and 2891; 2897; 2899; 2913; 2916; 2927 to 2930; 2933 and 2934; 3006 and 3008.)

As we have seen, the special provisions relating to Philippine oil were first introduced on the floor of the Senate; and, in the Senate debates, attention was called to the danger that the purpose of the bill might be defeated if the Philippine government should use the moneys transmitted to it to subsidize its coconut oil producers; with the result that Senator Norris included in his amendment the provisions concerning a Philippine subsidy. The entire discussion in the Senate is evidence that the congressional intent on the Philippine oil provisions was not to raise revenue but to regulate. (The discussions in the Senate are found on pages 6308 to 6325, and 6380 to 6389 of the Congressional Record, 73rd Congress, 2d Session, Vol. 78, Part 6, and a portion thereof is in the Appendix, infra. pp. 43-50.)

The decision of and the principles enunciated in the *Child Labor Tax Case* (*Bailey* v. *Drexel Furniture Co.*), 259 U. S. 20, furnish ample basis for the invalidation of the Philippine coconut oil processing tax provisions of the Revenue Act of 1934. In that case the statute simply levied a tax and contained no regulatory provisions whatever. Indeed, the taxes collected would go into the United States Treasury for regular governmental purposes; so there was not, as there is in the case at bar, express provisions excluding the collection of the tax as revenue for the United States Government. Both in that case and in the instant case the tax was upon a part or feature of the process of manufacture; there upon the use of labor of a certain kind, here upon the use of material of a certain kind. This Court refused to accept the congressional designation of the measure as a taxation measure or a revenue measure, but proceeded to analyze the nature of the objective and came to the conclusion that, despite the congressional phraseology, the measure was not a taxation or revenue measure but a measure in a field outside of the federal province.

The attorneys for the Government cite the *Child Labor* and other cases, particularly *Magnano Co.* v. *Hamilton*, 292 U. S. 40, for the proposition that an incidental regulatory motivation will not invalidate a measure whose primary motivation is revenue—a proposition which there is no need here to dispute. It is absurd to call the raising of revenue for the United States the primary motive of statutory provisions which exclude the United States from the receipt or use or control of whatever moneys may be raised under those provisions. In the provisions involved in this case, revenue is not even an incidental purpose; it does not exist at all.

In the *Child Labor* tax case this Court discussed the state bank note case, *Veazie Bank* v. *Fenno*, 8 Wall. 533, and distinguished it by the fact that the statute levying the destructive tax on state bank notes did not show on its face any motive or purpose other than revenue. That argument is not available to the Government in the case at bar, because here the statutory provisions disclose on their face that they are not for revenue.

In the *Child Labor* tax case, this Court also discussed *McCray* v. *United States*, 195 U. S. 27, the oleomargarine statute case. In that statute there were variations in the rate of tax according to the color of the oleomargarine, lending support to the contention that the law was intended to destroy the market of yellow oleomargarine. This Court held that this purpose was not readable from the face of the act and that there was nothing on the face of the act to indicate a purpose other than revenue. In the statutory provisions before us here, the face of the statute excludes the revenue purpose and discloses the regulatory purpose.

In *United States* v. *Doremus*, 249 U. S. 86, dealing with the anti-narcotic statute, the statute was on its face a revenue act and nothing but a revenue act, together with certain provisions which this Court held to be administrative

provisions for the collection of the tax. The statute, as thus interpreted, was simply a levy of taxes on the manufacture and sale of drugs; the proceeds, like other internal revenue, to go into the Treasury for the support of the United States Government. The Philippine coconut oil provisions of the 1934 Act cannot possibly be so interpreted.

Hill v. *Wallace*, 259 U. S. 44, was decided at about the same time as the Child Labor Case and dealt with a statute taxing contracts for future delivery of grain, and this was held unconstitutional because of the elaborate provisions in the act whereby the tax was lifted if certain conditions were filled, and these were held by this Court to be proof that the statute was not for revenue. The decision is authority for the unconstitutionality of the Philippine coconut oil provisions in the Act of 1934; for those provisions contain stronger proof that the tax is not for revenue than did the grain-futures statute.

The logic of the principles set forth by this Court in *United States* v. *Butler*, 297 U. S. 1, requires the invalidation of the processing tax on Philippine coconut oil in the Revenue Act of 1934. The opinion states (p. 61):

> "It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies an *exaction for the support of the Government.* The word has never been thought to connote the expropriation of money from one group for the benefit of another. We may concede that the latter sort of imposition is constitutional when imposed to effectuate regulation of a matter *in which both groups are interested and in respect of which there is a power of legislative regulation.* But manifestly no justification for it can be found unless as an integral part of such regulation. The exaction cannot be wrested out of its setting, denominated an excise for raising revenue and legalized

> by ignoring its purpose as a mere instrumentality for bringing about a desired end." (Italics ours.)

And, referring specifically to the Agricultural Adjustment Act levy:

> ". . . The whole revenue from the levy is appropriated in aid of crop control; none of it made available for general governmental use."

It is equally true that none of the collections from the tax on Philippine coconut oil under Section 602½ of the 1934 Act, is made available for general governmental use. No official or department of the United States government is permitted to touch or use a penny of it. The exaction made from the processors of this oil is not for the support of the government. The Philippine coconut oil provisions of the 1934 Act show on their face that revenue for the United States government was not the purpose or any part of the purpose of Congress. The face of the provisions show more than that; for the clause about a Philippine subsidy indicates plainly that the congressional objective was to affect the use of Philippine coconut oil by American soap, oleomargarine, and other manufacturers and thereby to affect the volume or prices or both of domestic oils which compete or can be made to compete with coconut oil—subjects falling within the constitutional domain of State and not national regulatory power.

The arguments advanced in the dissenting opinion in the *Butler* case do not conflict with the foregoing contentions concerning the effect of the *Butler* case upon the Philippine coconut oil provisions of the Revenue Act of 1934, for, in reconciling the position taken in that dissenting opinion with the previous decisions of this Court in the *Child Labor Tax Case* and other cases in which this Court had invalidated taxation statutes, those earlier cases were stated to be concerned with statutes in which the taxes "were them-

selves the instruments of regulation by virtue of their coercive effect on matters left to the control of the states, whereas, in the Agricultural Adjustment Act, the regulation, if any there be, is accomplished not by the tax but by the methods by which the proceeds are expended." In the Philippine coconut oil provisions of the Revenue Act of 1934, however, the intended regulatory effect is to be accomplished by the tax itself.

Under the *Child Labor* and *Hill* v. *Wallace* (supra) decisions, the Philippine coconut oil provisions of Section 602½ of the Act of 1934 are clearly unconstitutional, and, we submit, they cannot be upheld consistently with *United States* v. *Butler* (supra).

VII.

Philippine coconut oil provisions of Section 602½ of the Revenue Act of 1934, if treated as containing an appropriation, would also violate Clause 7 of Section 9 of Article I of the Constitution, taken in connection with Clause 1 of Section 8 of Article I of the Constitution and with the Fifth Amendment.

Clause 7 of Section 9 of Article I of the Constitution provides that "no money shall be drawn from the treasury but in consequence of appropriations made by law." While expressed negatively in terms of a prohibition upon those who wish to draw from the treasury, it surely includes or produces the positive duty of Congress to determine, by means of "appropriations made by law," the purposes for which the moneys in the treasury shall be expended and the amounts to be expended respectively for those purposes. This power of appropriation is a legislative power, indeed one of the most important of legislative powers, and has a most decisive influence upon the cost of government and the tax burden on those chosen to pay that cost, and surely some modicum of exercise of legislative thought or discretion is a requisite for valid action.

As we have seen, the Philippine coconut oil provisions of Section 602½ do not provide for the collection and expenditure of United States revenues, but for collection for the Philippine treasury. We do not have here an "appropriation" in the true sense of that word. Presumably all revenues collected for the support of the Government of the United States and available for appropriation do go into the United States Treasury as the United States Treasury and not merely as a conduit to somebody else.

Clause 7 of Section 9 of Article I seems to have occasioned few court decisions, and the contention made in this part of this brief may have some novelty. This novelty, however, may be the novelty of the statutory provisions which we are considering; for we believe that no precedent will be found in the whole legislative history of the United States for a measure which imposes a heavy, and in some cases, ruinous tax, producing around seventeen million dollars a year or more, upon one group of the American population, numerically a small proportion of that population, and does nothing with or about those onerous millions except to conduct them bodily into the treasury of another government.

There was of course not the slightest investigation into the relationship between the amount of the tax and the needs of the Philippine Commonwealth. Before the Committees which considered and prepared the measure or in the debates thereon, not a word was said nor an iota of evidence produced concerning the needs of the Philippine government. Not the slightest itemizing of the uses of the money was made or thought about. No control is reserved over the uses of the money. The amount bears not the slightest relationship to the needs, if any, for which it was raised or transmitted, nor was there the slightest thought given to any such relationship.

Actually there was no need. In connection with the inauguration of the Philippine Commonwealth, at the last session of the Philippine legislature under the Jones Act regime, the retiring Governor General Murphy sent a message reporting on the remarkable progress of the Philippine Islands, including the financial condition of its government, showing a surplus in the treasury of that government on December 31, 1934, of 75,179,189.42 pesos (over $37,000,000.00) and in the general fund alone a current surplus of approximately 37,000,000 pesos, of which a substantial portion was cash in the governmental depositories, and stating "in the central government for the past 2¾ years expenditures from all funds have been considerably less than the current revenues accruing to those funds." (House Document No. 400, 74th Congress, 2d Session, p. 61.)

As we have pointed out, the 1934 Revenue Bill as prepared by the Secretary of the Treasury and those who worked on it did not contain any section taxing the processing of oils. In the hearings on the bill, the representatives of the Treasury Department explained the needs of the United States Government and the reasons for the various provisions in the bill, but of course had no occasion to mention the oil processing taxes since they were not then in the bill. At no time in the hearings was there a word on any relationship between those processing taxes and the needs of either the United States Government or the Philippine government.

If we could assume, for purposes of argument, that the provisions of Section 602½ with which we are concerned in this case could be treated as a revenue and appropriation measure, they would represent an arbitrary action of Congress and one lacking in the slightest exercise of that minimum of thought and discretion which the Constitution requires of Congress as an appropriating body or as a taxing and appropriating body. Surely some calculation

of relationship between need and expenditure is fundamental to the validity of taxation and appropriation.

If the constitutional requirement of an appropriation could be satisfied by simply stating that all of the proceeds of a particular tax, no matter what the amount, shall be paid over to the Philippine treasury, then the same method could be applied to any and every other tax; that is, select a group which is to pay a specified type of tax, fix the amount without relationship to the needs for which the proceeds are to be applied and then send all the proceeds, whatever the amount may turn out to be, to a specified official, bureau, department or other recipient. No details of appropriation would be required, no study whatever given to the needs of the particular recipient or purpose, but simply the farming out of the yield of each tax to a single designated recipient, each selected group of the population to be burdened with a specific tax without any reasonable calculation of the relationship between the amount levied and the amount needed by the recipient. This would fail to measure up to the minimum requirements of a fiscal system. Clause 7 of Section 9 of Article I surely does not authorize such a procedure. That clause and Clause 1 of Section 8 of Article I of the Constitution surely have more significance than that, especially when taken in connection with the Fifth Amendment. Some exercise of legislative discretion as to the amount needed for the particular purpose is surely requisite.

There are instances, such as drainage districts, in which the entire cost is collected from the owners of the property in the district in accordance with benefits received and put into a special fund to pay that cost. The power of general taxation is not involved in that type of legislation. Then there is the class of measures which provide for pension, compensation or insurance funds where the contributions into the fund are to be made by those who are the bene-

ficiaries of the fund or of the pension, compensation or insurance system, and the amounts of the contributions are arrived at by a rational process of actuarial or similar calculations. There may be instances, such as gasoline taxes placed in the road maintenance fund, in which those who pay are so clearly the direct beneficiaries and in the proportion of payment, that the assessment and special fund method has some moral and rational and therefore constitutional basis. But there can be no sound moral or rational basis in a levy of taxes for a special-purpose fund when the taxpayer is not the direct beneficiary and the amount of the imposition has no relationship or calculable relationship to the amount of the benefit; and we submit that the United States Constitution does not intend that any such method be within the taxing powers of the national legislature. Any system of levies for special-purpose funds, as distinguished from levies for the national treasury from which Congress, by expenditure or appropriation acts, determines and authorizes expenditures for the various classes of governmental needs, is the worst possible system of public finance, one which not only produces endless confusions but in which there lurks the dangers of wastes and corruptions. We believe that such a system is not authorized by the Constitution of the United States and will briefly state some of the reasons, in the history of the Constitution and in decisions by this Court, which support that belief.

This Court has said in *Knowlton* v. *Moore*, 178 U. S. 41 (p. 95):

> "The necessities which gave birth to the Constitution, the controversies which preceded its formation, and the conflicts of opinion which were settled by its adoption, may properly be taken into view for the purpose of tracing to its source any particular provision of the Constitution in order thereby to be enabled to correctly interpret its meaning. *Pollock* v. *Farmers' Loan & Trust Company*, 157 U. S. 558 . . . "

Applying this canon of interpretation, we may inquire into the meaning of the congressional power "to lay and collect taxes, . . . to pay the debts and provide for the common defense and general welfare of the United States," and investigate the light thrown on a proper interpretation of such language by Clause 7 of Section 9 of Article I, providing: "No money shall be drawn from the treasury, but in consequence of appropriations made by law . . ."

This Court has said in *U. S.* v. *Norton*, 91 U. S. 566:

> "The lexical definition of the term 'revenue' is very comprehensive. It is thus given by Webster: 'the income of a nation, derived from its taxes, duties or other sources, for the payment of the national expenses.'"

The last quoted clause of the Constitution may then, well be paraphrased as "none of the income of the nation, derived from its taxes, duties or other sources for the payment of the national expenses, shall be drawn from the treasury, but in consequence of appropriations made by law."

Thus there is implicit in the taxing and appropriating clauses of the Constitution the requirement that taxes be levied for the national expenses, to be paid from the national treasury in consequence of appropriations made by law.

A reference to the early history of the Constitution shows the great importance which was attached to the procuring of a *national* revenue. It will be recalled that debate waxed warm on the question of whether the national government should be given the independent power of taxation, or whether the system in vogue under the Articles of Confederation, under which requisitions were made by the central government on the individual states, should be continued. In many of the Federalist papers we find repeated references to the importance of the power of taxation in the national government, and in these references we find

the importance of a national treasury stressed. In No. 30 of the Federalist, attributed to Alexander Hamilton, there is a discussion of the objects of the federal revenue, and after referring to the power of providing for the support of the national forces, of building and equipping fleets, etc., the Federalist continues:

> "But these are not the only objects to which the jurisdiction of the Union, in respect to revenue, must necessarily be empowered to extend. It must embrace a provision for the support of the national civil list; for the payment of the national debts contracted, or that may be contracted; and, in general, *for all those matters which will call for disbursement out of the national treasury.* The conclusion is, that there must be interwoven in the frame of the government, a general power of taxation, in one shape or another." (Italics ours.)

The constitutional debates, the Federalist papers, and other contemporary documents show the great importance which was attached to the general power of taxation in the federal government to provide for a public treasury to meet the exigencies of the government which then were known or which might be contemplated. The need of a federal treasury was the outstanding reason advanced for the taxation powers of the federal government.

It is thus historically the fact that the concept of a national treasury brought into being the power of national taxation vested in the Congress and it is the concept of a national treasury which illuminates and defines the meaning of the taxing power.

In *"The Foundations of the Constitution,"* by David Hutchinson, referring to the history of the taxation clause of the Constitution (Clause 1, Section 8, Article I), the author states:

> "This clause was suggested by Sherman in convention 'for the object of the old debt.' The convention

disagreed to it, but the Committee of Eleven recommended the same thing in their report of September 4th, which was agreed to nem. con. The clause was suggested to Sherman and the Committee by Article VIII of the Articles of Confederation. Sherman and Ellsworth in a letter to Governor Huntington, September 26, 1787, say:

'The objects for which Congress may apply moneys are the same mentioned in the Eighth Article of the Confederation, viz:, for the common defense and general welfare, and for the payment of debts incurred for those purposes.'

"Madison, in a letter to Andrew Stevenson, November 17, 1830, says the phraseology was copied or borrowed from the Eighth Article of the Articles of Confederation and is 'used in one instrument as in the other.'"

Article VIII of the Articles of Confederation, provided in part as follows:

"All charges of war and all other expenses that shall be incurred for the common defense or general welfare, and allowed by the United States in Congress assembled, shall be defrayed out of a *common treasury* . . ." (Italics ours.)

The retention in the Constitution of the United States of the language "for the common defense and general welfare" and the reference in Clause 7 of Section 9 of Article I to the treasury cannot be deemed accidental. The exaction of moneys for the purpose of the national treasury is the element which raises such exaction to the dignity of federal taxes.

In *Massachusetts* v. *Mellon*, 262 U. S. 447, this Court held that it would not entertain actions attacking the constitutional validity of an expenditure at the instance of one who paid taxes under general taxation statutes, for the reason that no taxpayer in particular could possibly

be identified as the one whose payments had been used for the expenditure, and that his enforced contribution to the whole mass of collections from general taxes is too small and indefinite to justify judicial interference. In the case of the special-purpose fund tax statute, however, the identification of who is to pay the tax and the amount of his enforced contribution is specified in the statute itself, and there is no uncertainty and, consequently, the question of the validity of the purpose must be open and contestable. Thus, in the case of special-purpose fund tax statutes, there is produced all of the demoralizations in the conduct of government affairs and in the conduct of business affairs, as well as the increase of constitutional law cases in the courts, which is involved in the uncertainties and necessities for decisions concerning the validity of the special purposes for which the tax is imposed and the special fund is created.

It is significant that in an early case, *Smith* v. *Turner*, 7 Howard 283, this Court employed the sentence (p. 446):

> "Congress may tax for the treasury of the Union, and here its power ends."

It is of significance that in every case in which this Court has sanctioned a federal statute which imposes an exaction for a fund other than the general treasury, this Court based its sanction or upholding of the statute on the ground that the exactions were not taxes, and found their justification in powers of Congress other than the taxing power.

An illustration is the case of *Edye* v. *Robertson*, 112 U. S. 580 (the Head-Money Case) involving a statute which levied upon steamship companies fifty-cents for each passenger brought to any port within the United States; the same to be paid to the Collector of Customs of the port and by him into the United States treasury, to constitute a fund to be called the "Immigrants Fund," which fund

was to be used under the direction of the Secretary of the Treasury to defray the expenses of regulating immigration under the statute and for the care of immigrants arriving in the United States and for the relief of such as are in distress and the like. The attack on this statute included the contention that it could be sustained under the taxation power; on which contention this Court stated:

> "But the true answer to all these objections is, that the power exercised in this instance is not the taxing power. The burden imposed on the ship owner by this statute is the mere incident of the regulation of commerce, of that branch of foreign commerce which is involved in immigration. The title of the Act 'an act to regulate immigration' is well chosen. It describes, as well as any short sentence can describe it, the real purpose and effect of the statute. Its provisions, from the beginning to the end, relate to the subject of immigration, and they are aptly designed to mitigate the evils, inherent in the business of bringing foreigners to this country, as those evils affect both the immigrant and the people among whom he is suddenly brought and left to his own resources.
>
> "It is true not much is said about protecting the ship owner, but he is the man who reaps the profits of the transaction, who has the means to protect himself and knows well how to do it, and whose obligations in the premises need the aid of the statutes for their enforcement. The sum demanded of him is not a tax within the meaning of the constitution. The money thus raised, though paid into the treasury, is appropriated in advance to the uses of the statute and does not go to the general support of the government. It constitutes a fund raised from those who are engaged in the transportation of the passengers, and who make profit out of it, for the temporary care of the passengers whom they bring among us and for the protection of the citizens among whom they are landed."

In *Twin City National Bank* v. *Nebeker*, 167 U. S. 196, this Court passed on an Act of Congress providing a na-

tional currency, secured by a pledge of bonds of the United States and which, in the furtherance of that object, and also to meet the expenses attending the execution of the Act, imposed a tax on the notes in circulation of the banking associations organized under the statute. The act did not originate in the House of Representatives, and this fact was alleged as a ground of unconstitutionality.

The Court said (p. 202):

> "The contention in this case is that the Section of the Act of June 3, 1864, providing a national currency secured by a pledge of United States bonds and for the circulation and redemption thereof, so far as it imposed a tax upon the average amount of the notes of a national banking association in circulation, was a revenue bill within the clause of the Constitution declaring that 'all bills for raising revenue shall originate in the House of Representatives.'
>
> . . . . . .
>
> "It is sufficient in the present case to say that an Act of Congress providing a national currency secured by a pledge of bonds of the United States, and which, in the furtherance of that object, and also to meet the expenses attending the execution of the Act, imposed a tax on the notes in circulation of the banking associations organized under the statute, is clearly not a revenue bill which the Constitution declares must originate in the House of Representatives. . . . The main purpose that Congress had in view was to provide a national currency based upon United States bonds and to that end it was deemed wise to impose the tax in question. The tax was a means of effectually accomplishing the great object of giving to the people a currency that would rest, primarily upon the honor of the United States, and be available in every part of the country. There was no purpose by the Act or by any of its provisions to raise revenue to be applied to meeting the expenses or obligations of the government."

In *United States* v. *Norton*, 91 U. S. 566, this Court held that a measure which fixed the fees to be paid for money orders and provided that the fees, without payment thereof into the Treasury, may be used at the post-offices to pay the compensations and expenses of the money-order clerks, was not a revenue measure, saying:

> "In no just view, we think, can the statute in question be deemed a revenue law.
>
> "The lexical definition of the term 'revenue' is very comprehensive. It is thus given by Webster: 'the income of a nation, derived from its taxes, duties or other sources, for the payment of the national expenses.
>
> "It is a matter of common knowledge, that the appellative 'revenue laws' is never applied to the statutes involved in these classes of cases.
>
> "The Constitution of the United States, Article I, Section 7, provided that 'All bills for raising revenue shall originate in the House of Representatives.'
>
> "The precise question before us came under consideration of Mr. Justice Story in U. S. v. Mayo, 1 Gall, 397. He held that the phrase 'revenue laws' as used in the Act of 1804, meant such laws 'as are made for the direct and avowed purpose of creating revenue or public funds for the service of the government. The same doctrine was reaffirmed by that eminent judge, in the U. S. v. Cushman, 2 Sumn. 426.
>
> "These views commend themselves to the approbation of our judgment."

See also *Millard* v. *Roberts*, 202 U. S. 429, 50 Law Ed. 1090, in which this Court held that an act imposing a tax for a fund for the elimination of grade crossings in the District of Columbia was not a revenue measure, this decision being based upon the holding in *Twin City National Bank* v. *Nebeker* (supra), that there was no purpose in the

act to raise revenue to be applied in meeting the expenses or obligations of the government.

If it be valid to levy a tax on one selected group, such as the processors of Philippine coconut oil, for payment not into the general treasury but into a special-purpose fund where the group has no direct interest in the special purpose and is not the beneficiary of the fund, if that be valid, then the same method could be used on any other group for any purpose no matter how unrelated the purpose and the group may be. Under such a scheme, the concept of a national treasury would tend to disappear or be very seriously impaired. We submit that such a statute would violate the Fifth Amendment, in that each selection of the group to bear the tax would be arbitrary; that each statute would either evade Clause 7 of Section of Article I of the Constitution by placing the proceeds of taxes out of the reach of appropriation acts, or, if the designation of the special-purpose fund could be treated as an appropriation, there would be failure to comply with the requirements of Clause 7 of Section 9 of Article I, taken in connection with the Fifth Amendment, that some degree of exercise of thought or discretion go into the determination of the amounts appropriated and the relationship of the amounts to the needs or purposes for which appropriated; and that each such statute would not be a valid exercise of the federal taxing power granted in the Constitution, since that taxing power was intended to provide for a common or national treasury from which, by means of the type of acts known as appropriations, moneys could be drawn for the support of the national government and for the financing of the activities of the national government.

VIII.

Conclusion.

As the federal government is a government of limited powers, it has no non-granted power of taxation or any other non-granted power. If, therefore, the Philippine coconut oil processing tax provisions of the Revenue Act of 1934 do not fall within the scope of the granted taxing or other powers, they are, for that reason, invalid.

We have shown, we submit, that the said provisions of the Revenue Act of 1934:

(a) Do not fall within the powers granted by Clause 1, of Section 8 of Article I of the Constitution, for the tax is not levied for the support of the Government of the United States or the financing of any activities of the Government of the United States, every penny from it being placed in the treasury of another government whose expenditure thereof is not controlled by the United States.

(b) Do not fall within said Clause 1, Section 8, Article I of the Constitution, for the tax is not imposed for the general welfare, being a collection from a designated group of American manufacturers exclusively for the treasury of a single locality.

(c) Do not fall within said Clause 1 of Section 8 of Article I of the Constitution, in that the tax is not imposed for the general welfare of the "United States," for the tax is imposed exclusively for the treasury of the Philippine Islands, which are not a part of the "United States" within the meaning of said clause of the Constitution.

(d) That the tax is not an import tax either under Clause 1 of Section 8 of Article I of the Constitution or under the general power of the United States relating to revenues to or for the Philippine Islands, for it is not levied upon nor is it intended to be levied upon imports; and for the further reason that it is not levied upon all imported Philippine coconut oil, and for the further reason that it is levied upon a purely domestic intra-United States, indeed intra-

state, transaction, which subject-matter of the tax does not and cannot come into being until after all importation has ceased.

(e) The said Philippine coconut oil provisions of the Act of 1934 are not an exercise of the power to regulate or control foreign or Philippine-United States commerce, firstly, because they are not intended to nor do they seek to nor do they regulate commerce between the Philippine Islands and points in the United States; secondly, because all commerce in the oil terminates before the beginning of the processing on which the tax is imposed; and thirdly, because, in so far as the provisions are regulatory, the subject-matter of their regulation is purely intrastate manufacture and intrastate agriculture.

(f) The said provisions are not an exercise of the power to finance the exercise by the United States of any of the responsibilities, duties, functions or activities of the United States in or relating to the Philippine Islands or the affairs of the Philippine Islands, for not one penny from the tax is authorized, directed, required or permitted to be used for any such purpose and the expenditure of the proceeds of the tax is left to the uncontrolled action of the Philippine legislature.

(g) The said provisions are not an exercise of any power which the United States may still possess to regulate the Philippine Islands, for the tax is imposed exclusively on purely domestic processing within and domestic processors within the United States.

In short, the provisions in question are not an exercise of any power possessed by Congress.

Respectfully submitted,

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APPENDIX 1

Section 602½ of Revenue Act of 1934
(c. 277, 48 Stat. 680, 763—U. S. C., Title 26, Sec. 999)

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal [1] oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine

[1] So in original.

production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by Section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in sub-section (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States.

APPENDIX 2

Sections of the Act of Congress of August 29, 1916, Chap. 416, 39 Stat. at L. 545

(Philippine Autonomy Act—"Jones Act")

. . . . . .

SEC. 3. That no law shall be enacted in said islands which shall deprive any person of life, liberty, or property without due process of law, or deny to any person therein the equal protection of the laws. Private property shall not be taken for public use without just compensation.

That in all criminal prosecutions the accused shall enjoy the right to be heard by himself and counsel, to demand the nature and cause of the accusations against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to compel the attendance of witnesses in his behalf.

That no person shall be held to answer for a criminal offense without due process of law; and no person for the same offense shall be twice put in jeopardy of punishment, nor shall be compelled in any criminal case to be a witness against himself.

That all persons shall before conviction be bailable by sufficient sureties, except for capital offenses.

That no law impairing the obligation of contracts shall be enacted.

That no person shall be imprisoned for debt.

That the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion, insurrection, or invasion the public safety may require it, in either of which events the same may be suspended by the President, or by the Governor General, wherever during such period the necessity for such suspension shall exist.

That no *ex post facto* law or bill of attainder shall be enacted nor shall the law of primogeniture ever be in force in the Philippines.

That no law granting a title of nobility shall be enacted, and no person holding any office of profit or trust in said Islands shall, without the consent of the Congress of the United States, accept any present, emolument, office, or title of any kind whatever from any king, queen, prince, or foreign state.

That excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

That the right to be secured against unreasonable searches and seizures shall not be violated.

That slavery shall not exist in said Islands; nor shall involuntary servitude exist therein except as a punishment for crime whereof the party shall have been duly convicted.

That no law shall be passed abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

That no law shall be made respecting an establishment of religion or prohibiting the free exercise thereof, and that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed; and no religious test shall be required for the exercise of civil or political rights. No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such. Contracting of polygamous or plural marriages hereafter is prohibited. That no law shall be construed to permit polygamous or plural marriages.

That no person shall be paid out of the treasury except in pursuance of an appropriation by law.

That the rule of taxation in said Islands shall be uniform.

That no bill which may be enacted into law shall embrace more than one subject, and that subject shall be expressed in the title of the bill.

That no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or things to be seized.

That all money collected on any tax levied or assessed for a special purpose shall be treated as a special fund in the treasury and paid out for such purpose only.

SEC. 4. That all expenses that may be incurred on account of the government of the Philippines for salaries of officials and the conduct of their offices and departments,

and all expenses and obligations contracted for the internal improvement or development of the Islands, not, however, including defenses, barracks, and other works undertaken by the United States, shall, except as otherwise specifically provided by the Congress, be paid by the government of the Philippines.

SEC. 5. That the statutory laws of the United States hereafter enacted shall not apply to the Philippine Islands, except when they specifically so provide, or it is so provided in this act.

SEC. 6. That the laws now in force in the Philippines shall continue in force and effect, except as altered, amended, or modified herein, until altered, amended, or repealed by the legislative authority herein provided or by act of Congress of the United States.

SEC. 7. That the legislative authority herein provided shall have power, when not inconsistent with this act, by due enactment to amend, alter, modify, or repeal any law, civil or criminal, continued in force by this act as it may from time to time see fit.

This power shall specifically extend with the limitation herein provided as to the tariff to all laws relating to revenue and taxation in effect in the Philippines.

SEC. 8. That general legislative power, except as otherwise herein provided, is hereby granted to the Philippine legislature, authorized by this act.

SEC. 9. That all the property and rights which may have been acquired in the Philippine Islands by the United States under the treaty of peace with Spain, signed December tenth, eighteen hundred and ninety-eight, except such land or other property as has been or shall be designated by the President of the United States for military and other reservations of the government of the United States, and all lands which may have been subsequently acquired by the government of the Philippine Islands by purchase under the provisions of sections sixty-three and sixty-four of the act of Congress approved July first, nineteen hundred and two, except such as may have heretofore been sold and disposed of in accordance with the provisions of said Act of Congress, are hereby placed under the control of the government of said Islands to be administered or

disposed of for the benefit of the inhabitants thereof, and the Philippine legislature shall have power to legislate with respect to all such matters as it may deem advisable; but acts of the Philippine legislature with reference to land of the public domain, timber, and mining, hereafter enacted, shall not have the force of law until approved by the President of the United States: Provided, That upon the approval of such an act by the Governor General, it shall be by him forthwith transmitted to the President of the United States, and he shall approve or disapprove the same within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved: Provided further, That where lands in the Philippine Islands have been or may be reserved for any public purpose of the United States, and, being no longer required for the purpose for which reserved, have been or may be, by order of the President, placed under the control of the government of said Islands to be administered for the benefit of the inhabitants thereof, the order of the President shall be regarded as effectual to give the government of said Islands full control and power to administer and dispose of such lands for the benefit of the inhabitants of said Islands.

SEC. 10. That while this act provides that the Philippine government shall have the authority to enact a tariff law the trade relations between the Islands and the United States shall continue to be governed exclusively by laws of the Congress of the United States: Provided, That tariff acts or acts amendatory to the tariff of the Philippine Islands shall not become law until they shall receive the approval of the President of the United States, nor shall any act of the Philippine legislature affecting immigration or the currency or coinage laws of the Philippines become a law until it has been approved by the President of the United States: Provided further, That the President shall approve or disapprove any act mentioned in the foregoing proviso within six months from and after its enactment and submission for his approval, and if not disapproved within such time it shall become a law the same as if it had been specifically approved.

SEC. 11. That no export duties shall be levied or collected on exports from the Philippine Islands, but taxes and assessments on property, and license fees for franchises and privileges, and internal taxes, direct or indirect, may be imposed for the purposes of the Philippine government and the provincial and municipal governments thereof, respectively, as may be provided and defined by acts of the Philippine legislature, and, where necessary to anticipate taxes and revenues, bonds and other obligations may be issued by the Philippine government or any provincial or municipal government therein, as may be provided by law and to protect the public credit: Provided, however, That the entire indebtedness of the Philippine government created by the authority conferred therein shall not exceed at any one time the sum of $15,000,000 exclusive of those obligations known as friar land bonds, nor that of any province or municipality a sum in excess of seven per centum of the aggregate tax valuation of its property at any one time.

(This Section was amended first by Act of Congress of July 21, 1921, and subsequently by Act of Congress of May 31, 1922, by making the proviso read as follows: "Provided, however, That the entire indebtedness of the Philippine Government created by the authority conferred herein, exclusive of those obligations known as friar land bonds, shall not exceed at any one time 10 per centum of the aggregate tax valuation of its property, nor that of the city of Manila 10 per centum of the aggregate tax valuation of its property, nor that of any Province or municipality a sum in excess of 7 per centum of the aggregate tax valuation of its property at any one time. In computing the indebtedness of the Philippine Government, bonds not to exceed $10,000,000 in amount, issued by that Government, secured by an equivalent amount of bonds issued by the Province or municipalities thereof, shall not be counted.")

SEC. 12. That general legislative powers in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two houses, one the senate and the other the house of representatives, and the two houses shall be designated "the Philippine legislature:" Provided, That until the Philippine legislature as

herein provided shall have been organized the existing Philippine legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except such as may now be within the exclusive jurisdiction of the Philippine Commission, which is so continued until the organization of the legislature herein provided for the Philippines. When the Philippine legislature shall have been organized, the exclusive legislative jurisdiction and authority exercised by the Philippine Commission shall thereafter be exercised by the Philippine legislature.

SEC. 13. That the members of the senate of the Philippines, except as herein provided, shall be elected for terms of six and three years, as hereinafter provided, by the qualified electors of the Philippines. Each of the senatorial districts defined as hereinafter provided shall have the right to elect two senators. No person shall be an elective member of the senate of the Philippines who is not a qualified elector and over thirty years of age, and who is not able to read and write either the Spanish or English language, and who has not been a resident of the Philippines for at least two consecutive years and an actual resident of the senatorial district from which chosen for a period of at least one year immediately prior to his election.

SEC. 14. That the members of the house of representatives shall, except as herein provided, be elected triennially by the qualified electors of the Philippines. Each of the representative districts hereinafter provided for shall have the right to elect one representative. No person shall be an elective member of the house of representatives who is not a qualified elector and over twenty-five years of age, and who is not able to read and write either the Spanish or English language, and who has not been an actual resident of the district from which elected for at least one year immediately prior to his election; Provided, That the members of the present assembly elected on the first Tuesday in June, nineteen hundred and sixteen, shall be the members of the house of representatives from their respective districts for the term expiring in nineteen hundred and nineteen.

SEC. 19. That each house of the legislature shall keep a journal of its proceedings, and, from time to time, publish the same; and the yeas and nays of the members of either house, on any question, shall, upon demand of one-fifth of those present, be entered on the journal, and every bill and joint resolution which shall have passed both houses shall, before it becomes a law, be presented to the Governor General. If he approves the same, he shall sign it; but if not, he shall return it with his objections to that house in which it shall have originated, which shall enter the objections at large on its journal and proceed to reconsider it. If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the same, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of all the members elected to that house it shall be sent to the Governor General, who, in case he shall then not approve, shall transmit the same to the President of the United States. The vote of each house shall be by the yeas and nays, and the names of the members voting for and against shall be entered on the journal. If the President of the United States approve the same, he shall sign it and it shall become a law. If he shall not approve the same, he shall return it to the Governor General, so stating, and it shall not become a law; Provided, That if any bill or joint resolution shall not be returned by the Governor General as herein provided within twenty days (Sundays excepted) after it shall have been presented to him the same shall become a law in like manner as if he had signed it, unless the legislature by adjournment prevent its return, in which case it shall become a law unless vetoed by the Governor General within thirty days after adjournment: Provided further, That the President of the United States shall approve or disapprove an act submitted to him under the provisions of this section within six months from and after its enactment and submission for its approval; and if not approved within such time, it shall become a law the same as if it had been specifically approved. The Governor General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object. The

item or items objected to shall not take effect except in the manner heretofore provided in this section as to bills and joint resolutions returned to the legislature without his approval.

All laws enacted by the Philippine legislature shall be reported to the Congress of the United States, which hereby reserves the power and authority to annul the same. If at the termination of any fiscal year the appropriations necessary for the support of government for the ensuing fiscal year shall not have been made, the several sums appropriated in the last appropriation bills for the objects and purposes therein specified, so far as the same may be done, shall be deemed to be reappropriated for the several objects and purposes specified in said last appropriation bill; and until the legislature shall act in such behalf the treasurer shall, when so directed by the Governor General, make the payments necessary for the purposes aforesaid.

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SEC. 21. That the supreme executive power shall be vested in an executive officer, whose official title shall be "the Governor General of the Philippine Islands." He shall be appointed by the President, by and with the advice and consent of the Senate of the United States, and hold his office at the pleasure of the President and until his successor is chosen and qualified. The Governor General shall reside in the Philippine Islands during his official incumbency, and maintain his office at the seat of government. He shall, unless otherwise herein provided, appoint, by and with the consent of the Philippine senate, such officers as may now be appointed by the Governor General, or such as he is authorized by this act to appoint, or whom he may hereafter be authorized by law to appoint; but appointments made while the senate is not in session shall be effective either until disapproval or until the next adjournment of the senate. He shall have general supervision and control of all of the departments and bureaus of the government in the Philippine Islands as far as is not inconsistent with the provisions of this act, and shall be commander in chief of all locally created armed forces and Militia. He is hereby vested with the exclusive power

to grant pardons and reprieves and remit fines and forfeitures, and may veto any legislation enacted as herein provided. He shall submit within ten days of the opening of each regular session of the Philippine legislature a budget of receipts and expenditures, which shall be the basis of the annual appropriation bill. He shall commission all officers that he may be authorized to appoint. He shall be responsible for the faithful execution of the laws of the Philippine Islands and of the United States operative within the Philippine Islands, and whenever it becomes necessary he may call upon the commanders of the military and naval forces of the United States in the Islands, or summon the *posse comitatus*, or call out the Militia or other locally created armed forces, to prevent or suppress lawless violence, invasion, insurrection, or rebellion; and he may, in case of rebellion or invasion, or imminent danger thereof, when the public safety requires it, suspend the privileges of the writ of habeas corpus, or place the Islands, or any part thereof, under martial law: Provided, That whenever the Governor General shall exercise this authority, he shall at once notify the President of the United States thereof, together with the attending facts and circumstances, and the President shall have power to modify or vacate the action of the Governor General. He shall annually and at such other times as he may be required, make such official report of the transactions of the government of the Philippine Islands to an executive department of the United States to be designated by the President, and his said annual report shall be transmitted to the Congress of the United States; and he shall perform such additional duties and functions as may in pursuance of law, be delegated or assigned to him by the President.

SEC. 22. That, except as provided otherwise in this act, the executive departments of the Philippine government shall continue as now authorized by law until otherwise provided by the Philippine legislature. When the Philippine legislature herein provided shall convene and organize, the Philippine Commission, as such, shall cease and determine, and the members thereof shall vacate their offices as members of said Commission: Provided, That the heads of executive departments shall continue to exer-

cise their executive functions until the heads of departments provided by the Philippine legislature pursuant to the provisions of this act are appointed and qualified. The Philippine legislature may thereafter by appropriate legislation increase the number or abolish any of the executive departments, or make such changes in the names and duties thereof as it may see fit, and shall provide for the appointment and removal of the heads of the executive departments by the Governor General: Provided, That all executive functions of the government must be directly under the Governor General or within one of the executive departments under the supervision and control of the Governor General. There is hereby established a bureau, to be known as the bureau of non-Christian tribes, which said bureau shall be embraced in one of the executive departments to be designated by the Governor General, and shall have general supervision over the public affairs of the inhabitants of the territory represented in the legislature by appointive senators and representatives.

SEC. 23. That there shall be appointed by the President, by and with the advice and consent of the Senate of the United States, a vice governor of the Philippine Islands, who shall have all the powers of the Governor General in the case of a vacancy or temporary removal, resignation, or disability of the Governor General, or in case of his temporary absence; and the said vice governor shall be the head of the executive department, known as the department of public instruction, which shall include the bureau of education and the bureau of health, and he may be assigned such other executive duties as the Governor General may designate.

Other bureaus now included in the department of public instruction shall, until otherwise provided by the Philippine legislature, be included in the department of the interior.

The President may designate the head of an executive department of the Philippine government to act as Governor General in the case of a vacancy, the temporary removal, resignation, or disability of the Governor General and the vice governor, or their temporary absence, and the head of the department thus designated shall exercise

all the powers and perform all the duties of the Governor General during such vacancy, disability, or absence.

SEC. 24. That there shall be appointed by the President an auditor, who shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government of the provinces or municipalities thereof. He shall perform a like duty with respect to all government branches.

(Here follow other provisions regarding the organization of the office of the auditor.)

The office of the auditor shall be under the general supervision of the Governor General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law.

SEC. 25. . . .

If the Governor General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive.

SEC. 26. That the supreme court and the courts of first instance of the Philippine Islands shall possess and exercise jurisdiction as heretofore provided and such additional jurisdiction as shall hereafter be prescribed by law. The municipal courts of said Islands shall possess and exercise jurisdiction as now provided by law, subject in all matters to such alteration and amendment as may be hereafter enacted by law; and the chief justice and associate justices of the supreme court shall hereafter be appointed by the President, by and with the advice and consent of the Senate of the United States. The judges of the court of first instance shall be appointed by the Gov-

ernor General, by and with the advice and consent of the Philippine senate: Provided, That the admiralty jurisdiction of the supreme court and courts of first instance shall not be changed except by act of Congress. That in all cases pending under the operation of existing laws, both criminal and civil, the jurisdiction shall continue until final judgment and determination.

(Section 27 contains provisions regarding the jurisdiction of the supreme court of the United States to review judgments of Philippine Courts.)

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SEC. 29. That, except as in this act otherwise provided, the salaries of all the officials of the Philippines not appointed by the President, including deputies, assistants, and other employees, shall be such and be so paid out of the revenues of the Philippines as shall from time to time be determined by the Philippine legislature; and if the legislature shall fail to make an appropriation for such salaries, the salaries so fixed shall be paid without the necessity of further appropriation thereof. The salaries of all officers and all expenses of the offices of the various officials of the Philippines appointed as herein provided by the President shall also be paid out of the revenues of the Philippines. The annual salaries of the following named officials appointed by the President and so to be paid shall be: The Governor General $18,000; in addition thereto he shall be entitled to the occupancy of the buildings heretofore used by the chief executive of the Philippines, with the furniture and effects therein, free of rental; vice governor, $10,000; chief justice of the supreme court, $8,000; associate justices of the supreme court, $7,500 each; auditor, $6,000; deputy auditor, $3,000.

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APPENDIX 3

Philippine Independence Act

Act of March 24, 1934, c. 84, 48 Stat. 456

[Public No. 127, 73d Congress]

[H. R. 8573]

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

CONVENTION TO FRAME CONSTITUTION FOR PHILIPPINE ISLANDS.

SECTION 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a constitutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in Article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS.

SEC. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and

shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippine Islands and the United States shall be upon the basis prescribed in Section 6.

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government.

(8) Provision shall be made for the establishment and maintenance of an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the Legislature of the Commonwealth of the Philippine Islands shall be reported to the Congress of the United States.

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of Section 7.

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

(15) The authority of the United States High Commissioner to the government of the Commonwealth of the Philippine Islands, as provided in this Act, shall be recognized.

(16) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof.

(b) The constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged,

respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution.

(3) That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

SUBMISSION OF CONSTITUTION TO THE PRESIDENT OF THE UNITED STATES.

SEC. 3. Upon the drafting and approval of the constitution by the constitutional convention in the Philippine Islands, the constitution shall be submitted within two years after the enactment of this Act to the President of the United States, who shall determine whether or not it conforms with the provisions of this Act. If the President

finds that the proposed constitution conforms substantially with the provisions of this Act he shall so certify to the Governor General of the Philippine Islands, who shall so advise the constitutional convention. If the President finds that the constitution does not conform with the provisions of this Act he shall so advise the Governor General of the Philippine Islands, stating wherein in his judgment the constitution does not so conform and submitting provisions which will in his judgment make the constitution so conform. The Governor General shall in turn submit such message to the constitutional convention for further action by them pursuant to the same procedure hereinbefore defined, until the President and the constitutional convention are in agreement.

SUBMISSION OF CONSTITUTION TO FILIPINO PEOPLE.

SEC. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine Independence, and the Governor General shall, within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution.

The election shall take place not earlier than three months nor later than six months after the proclamation by the Governor General ordering such election. When the election of the officers provided for under the constitution has been held and the results determined, the Governor General of the Philippine Islands shall certify the results of the election to the President of the United States, who shall thereupon issue a proclamation announcing the results of the election, and upon the issuance of such proclamation by the President the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers, and duties, as provided under the constitution. The present government of the Philippine Islands shall provide for the orderly transfer of the functions of government.

If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.

TRANSFER OF PROPERTY AND RIGHTS TO PHILIPPINE COMMONWEALTH.

SEC. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

RELATIONS WITH THE UNITED STATES PENDING COMPLETE INDEPENDENCE.

SEC. 6. After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law, subject to the following exceptions:

(a) There shall be levied, collected, and paid on all refined sugars in excess of fifty thousand long tons, and on unrefined sugars in excess of eight hundred thousand long tons, coming into the United States from the Philippine Islands in any calendar year, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(b) There shall be levied, collected, and paid on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of two hundred thousand long tons, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(c) There shall be levied, collected, and paid on all yarn, twine, cord, cordage, rope and cable, tarred or untarred, wholly or in chief value of manila (abaca) or other hard fibers, coming into the United States from the Philippine Islands in any calendar year in excess of a collective total of three million pounds of all such articles hereinbefore enumerated, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(d) In the event that in any year the limit in the case of any article which may be exported to the United States free of duty shall be reached by the Philippine Islands, the amount or quantity of such articles produced or manufactured in the Philippine Islands thereafter that may be so exported to the United States free of duty shall be allocated, under export permits issued by the government of the Commonwealth of the Philippine Islands, to the producers or manufacturers of such articles proportionately on the basis of their exportation to the United States in the preceding year; except that in the case of unrefined sugar the amount thereof to be exported annually to the United States free of duty shall be allocated to the sugar-producing mills of the islands proportionately on the basis of their average annual production for the calendar years 1931, 1932, and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the

mill and the planters on the basis of the proportion of sugar to which the mill and the planters are respectively entitled. The government of the Philippine Islands is authorized to adopt the necessary laws and regulations for putting into effect the allocation hereinbefore provided.

(e) The government of the Commonwealth of the Philippine Islands shall impose and collect an export tax on all articles that may be exported to the United States from the Philippine Islands free of duty under the provisions of existing law as modified by the foregoing provisions of this section, including the articles enumerated in subdivisions (a), (b), and (c), within the limitations therein specified, as follows:

(1) During the sixth year after the inauguration of the new government the export tax shall be 5 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(2) During the seventh year after the inauguration of the new government the export tax shall be 10 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(3) During the eighth year after the inauguration of the new government the export tax shall be 15 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(4) During the ninth year after the inauguration of the new government the export tax shall be 20 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries.

(5) After the expiration of the ninth year after the inauguration of the new government the export tax shall be 25 per centum of the rates of duty which are required by the laws of the United States to be levied, collected and paid on like articles imported from foreign countries;

The government of the Commonwealth of the Philippine Islands shall place all funds received from such export

taxes in a sinking fund, and such funds shall, in addition to other moneys available for that purpose, be applied solely to the payment of the principal and interest on the bonded indebtedness of the Philippine Islands, its Provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged.

When used in this section in a geographical sense, the term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and the islands of Guam.

SEC. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds or which seems likely to impair the reserves for the protection of the currency of the Philippine Islands or which in his judgment will violate international obligations of the United States.

(3) The Chief Executive of the Commonwealth of the Philippine Islands shall make an annual report to the President and Congress of the United States of the proceedings and operations of the government of the Commonwealth of the Philippine Islands and shall make such other reports as the President or Congress may request.

(4) The President shall appoint by and with the advice and consent of the Senate a United States High Commis-

sioner to the government of the Commonwealth of the Philippine Islands who shall hold office at the pleasure of the President and until his successor is appointed and qualified. He shall be known as the United States High Commissioner to the Philippine Islands. He shall be the representative of the President of the United States in the Philippine Islands and shall be recognized as such by the government of the Commonwealth of the Philippine Islands, by the commanding officers of the military forces of the United States, and by all civil officials of the United States in the Philippine Islands. He shall have access to all records of the government or any subdivision thereof, and shall be furnished by the Chief Executive of the Commonwealth of the Philippine Islands with such information as he shall request.

If the government of the Commonwealth of the Philippine Islands fails to pay any of its bonded or other indebtedness or the interest thereon when due or to fulfill any of its contracts, the United States High Commissioner shall immediately report the facts to the President, who may thereupon direct the High Commissioner to take over the customs offices and administration of the same, administer the same, and apply such part of the revenue received therefrom as may be necessary for the payment of such overdue indebtedness or for the fulfillment of such contracts. The United States High Commissioner shall annually, and at such other times as the President may require, render an official report to the President and Congress of the United States. He shall perform such additional duties and functions as may be delegated to him from time to time by the President under the provisions of this Act.

The United States High Commissioner shall receive the same compensation as is now received by the Governor General of the Philippine Islands, and shall have such staff and assistants as the President may deem advisable and as may be appropriated for by Congress, including a financial expert, who shall receive for submission to the High Commissioner a duplicate copy of the reports of the insular auditor. Appeals from decisions of the insular auditor may be taken to the President of the United States.

The salaries and expenses of the High Commissioner and his staff and assistants shall be paid by the United States.

The first United States High Commissioner appointed under this Act shall take office upon the inauguration of the new government of the Commonwealth of the Philippine Islands.

(5) The government of the Commonwealth of the Philippine Islands shall provide for the selection of a Resident Commissioner to the United States, and shall fix his term of office. He shall be the representative of the government of the Commonwealth of the Philippine Islands and shall be entitled to official recognition as such by all departments upon presentation to the President of credentials signed by the Chief Executive of said government. He shall have a seat in the House of Representatives of the United States, with the right of debate, but without the right of voting. His salary and expenses shall be fixed and paid by the government of the Philippine Islands. Until a Resident Commissioner is selected and qualified under this section, existing law governing the appointment of Resident Commissioners from the Philippine Islands shall continue in effect.

(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. This paragraph shall not apply to a person coming or seeking to come to the Territory of

Hawaii who does not apply for and secure an immigration or passport visa, but such immigration shall be determined by the Department of the Interior on the basis of the needs of industries in the Territory of Hawaii.

(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such Territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such Territory under an immigration visa. The Secretary of Labor shall by regulations provide a method for such exclusion and for the admission of such excepted classes.

(3) Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, for such period as may be necessary and under such regulations as the Secretary of State may prescribe, during which assignment such officer shall be considered as stationed in a foreign country; but his powers and duties shall be confined to the performance of such of the official acts and notarial and other services, which such officer might properly perform in respect of the administration of the immigration laws if assigned to a foreign country as a consular officer, as may be authorized by the Secretary of State.

(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws not inapplicable, shall apply to and be enforced in connection with the *provisions* of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the

immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provision of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

SEC. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: Provided, That such bonds and obligations hereafter issued shall not be exempt from taxation in the United States or by authority of the United States.

RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY.

SEC. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands, not later than

two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

NEUTRALIZATION OF PHILIPPINE ISLANDS.

SEC. 11. The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

NOTIFICATION TO FOREIGN GOVERNMENTS.

SEC. 12. Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

TARIFF DUTIES AFTER INDEPENDENCE.

SEC. 13. After the Philippine Islands have become a free and independent nation there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from other foreign countries: Provided, That at least one year prior to the date fixed in this Act for the independence of the Philippine Islands, there shall be held a conference of representatives of the Government of the United States and the government of the Commonwealth of the Philippine Islands, such representatives to be appointed by the President of the United States and the Chief Executive of the Commonwealth of the Philippine Islands, respectively, for the purpose of formulating recommendations as to future trade relations between the Government of the United States and the independent government of the

Philippine Islands, the time, place, and manner of holding such conference to be determined by the President of the United States; but nothing in this proviso shall be construed to modify or affect in any way any provision of this Act relating to the procedure leading up to Philippine independence or the date upon which the Philippine Islands shall become independent.

IMMIGRATION AFTER INDEPENDENCE

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

CERTAIN STATUTES CONTINUED IN FORCE.

SEC. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States, and all references in such laws to the government or officials of the Philippines or Philippine Islands shall be construed, insofar as applicable, to refer to the government and corresponding officials respectively of the Commonwealth of the Philippine Islands. The government of the Commonwealth of the Philippine Islands shall be deemed successor to the present government of the Philippine Islands and of all the rights and obligations thereof. Except as otherwise provided in this Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

SEC. 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder

of the Act and the applicability of such provisions to other persons and circumstances shall not be affected therebv.

EFFECTIVE DATE.

SEC. 17. The foregoing provisions of this Act shall not take effect until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question as may be provided by the Philippine Legislature.

Approved, March 24, 1934.

APPENDIX 4

Portions of the Constitution of Philippines Adopted by the Philippine Constitutional Convention, February 8, 1935

ARTICLE VI.

LEGISLATIVE DEPARTMENT

SECTION 1. The Legislative power shall be vested in a National Assembly. The members of the National Assembly shall not exceed one hundred and twenty, shall be chosen every three years, and shall be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants, but each province shall have at least one Member. The National Assembly shall by law make an apportionment within three years after the return of every enumeration, and not otherwise. Until such apportionment shall have been made, the National Assembly shall consist of ninety-eight Members, of whom eighty-seven shall be elected by the representative districts as now provided by law; and three by the Mountain Province, and one by each of the other eight existing special provinces. The Members of the National Assembly in the provinces of Sulu, Lanao, and Cotabato shall be chosen as may be determined by law; in all other provinces they shall be elected by the qualified voters therein.

SEC. 2. No person shall be a Member of the National Assembly unless he has been five years a citizen of the Philippines, is at least thirty years of age, and, at the time of his election, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election.

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SEC. 9. (1) The President shall submit within fifteen days of the opening of each regular session of the National Assembly a budget of receipts and expenditures, which shall be the basis of the general appropriation bill. The National Assembly may not increase the appropriations recommended by the President for the operation of the Government as specified in the Budget, except the appropriations for the National Assembly and the Judicial De-

partment. The form of the budget and the information that it should contain shall be prescribed by law.

(2) No provision or enactment shall be embraced in the general appropriation, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriations.

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SEC. 13. (1) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

(2) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

(3) No public money or property shall be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.

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ARTICLE VII.

EXECUTIVE DEPARTMENT

SEC. 1. The Executive power shall be vested in a President of the Philippines.

SEC. 2. The President shall hold his office during a term of six years, and together with the Vice-President chosen for the same term, shall be elected by direct vote of the people. The election returns for President and Vice-President, duly certified by the board of canvassers of each province, shall be transmitted to the National Assembly. Upon receipt of such returns the National Assembly shall forthwith, in public session, count the votes, and proclaim

the persons elected President and Vice-President. The persons respectively having the highest number of votes for President and Vice-President shall be declared elected, but in case of two or more shall have an equal and the highest number of votes for either office, the National Assembly shall, by a majority vote of all its Members, elect one of said persons as President or Vice-President.

SEC. 3. No person may be elected to the office of President or Vice-President, unless he is a natural-born citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election.

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SEC. 11. (1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.

(2) The President shall be commander in chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

(3) The President shall nominate and with the consent of the Commission on Appointments of the National Assembly, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and Air Forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the National Assembly may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.

(4) The President shall have the power to make appointments during the recess of the National Assembly, but such appointments shall be effective only until disapproval by

the Commission on Appointments or until the next adjournment of the National Assembly.

(5) The President shall from time to time give to the National Assembly information of the state of the Nation, and recommend to its consideration such measures as he shall judge necessary and expedient.

(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly.

(7) The President shall have the power, with the concurrence of a majority of all the Members of the National Assembly, to make treaties, and with the consent of the Commission on Appointments, he shall appoint ambassadors, other public ministers, and consuls. He shall receive ambassadors and other ministers duly accredited to the Government of the Philippines.

SEC. 12. (1) The executive departments of the present Government of the Philippine Islands shall continue as now authorized by law until the National Assembly shall provide otherwise.

(2) The heads of departments and chiefs of bureaus or offices and their assistants shall not, during their continuance in office, engage in the practice of any profession, or intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office; nor shall they, directly or indirectly, be financially interested in any contract with the Government, or any subdivision or instrumentality thereof.

(3) The President may appoint the Vice-President as a member of his cabinet and also as head of an executive department.

ARTICLE XII.

Conservation and Utilization of Natural Resources

Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing rights, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

APPENDIX 5

Ordinance Appended to the Constitution of the Philippine Commonwealth

Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every office of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippine recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Act of Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approve the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of the Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

SEC. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a Resident Commissioner of the Philippines to the United States who shall be appointed by the President of the Commonwealth of the Philippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One Hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications,

compensation, and expenses of the Resident Commissioner shall be fixed by law.

SEC. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.

APPENDIX 6

Act of June 17, 1930, c. 497, Title III, Sec. 301, 46 Stat. 685
U. S. Code, Title 19 (Customs Duties), Sec. 1301

"SEC. 301. *Philippine Islands.* There shall be levied, collected, and paid upon all articles coming into the ~~United~~ States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported for foreign countries: *Provided,* That all articles, the growth or product of or manufactured in the Philippine Islands from materials the growth or product of the Philippine Islands or of the United States, or of both, or which do not contain foreign materials to the value of more than 20 per centum of their total value, upon which no drawback of customs duties has been allowed therein, coming into the United States from the Philippine Islands shall hereafter be admitted free of duty; *Provided, however,* That in consideration of the exemptions aforesaid, all articles, the growth, product, or manufacture of the United States, upon which no drawback of customs duties has been allowed therein, shall be admitted to the Philippine Islands from the United States free of duty: *And provided further,* That the free admission, herein provided, of such articles, the growth, product, or manufacture of the United States, into the Philippine Islands, or of the growth, product, or manufacture, as hereinbefore defined, of the Philippine Islands into the United States, shall be conditioned upon the direct shipment thereof, under a through bill of lading, from the country of origin to the country of destination: *Provided,* That direct shipments shall include shipments in bond through foreign territory contiguous to the United States: *Provided, however,* That if such articles become unpacked while en route by accident, wreck, or other casualty, or so damaged as to necessitate their repacking, the same shall be admitted free of duty upon satisfactory proof that the unpacking occurred through accident or necessity and that the merchandise involved is the identical merchandise originally shipped from the United States or the Philippine Islands, as the case may be, and that its condition has not been changed except for such damage as may have been sustained: *And*

provided, That there shall be levied, collected, and paid, in the United States, upon articles, goods, wares, or merchandise coming into the United States from the Philippine Islands a tax equal to the internal-revenue tax imposed in the United States upon the like articles, goods, wares, or merchandise of domestic manufacture; such tax to be paid by internal-revenue stamp or stamps, to be provided by the Commissioner of Internal Revenue, and to be affixed in such manner and under such regulations as he, with the approval of the Secretary of the Treasury shall prescribe; and such articles, goods, wares, or merchandise shipped from said islands to the United States shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands: *And provided further,* That there shall be levied, collected, and paid in the Philippine Islands, upon articles, goods, wares, or merchandise going into the Philippine Islands from the United States, a tax equal to the internal-revenue tax imposed in the Philippine Islands upon the like articles, goods, wares, or merchandise of Philippine Islands manufacture; such tax to be paid by internal-revenue stamps or otherwise, as provided by the laws of the Philippine Islands; and such articles, goods, wares, or merchandise going into the Philippine Islands from the United States shall be exempt from the payment of any tax imposed by the internal-revenue laws of the United States: *And provided further,* That in addition to the customs taxes imposed in the Philippine Islands, there shall be levied, collected, and paid therein upon articles, goods, wares, or merchandise imported into the Philippine Islands from countries other than the United States the internal-revenue tax imposed by the Philippine Government on like articles manufactured and consumed in the Philippine Islands or shipped thereto for consumption therein from the United States: *And provided further,* That from and after June 17, 1930, all internal-revenues collected in or for account of the Philippine Islands shall accrue intact to the general government thereof and be paid into the insular treasury."

APPENDIX 7

Congressional Record (Senate), Vol. 78, Pt. 6, page 6380

(April 11, 1934)

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Mr. Norris. I am offering a perfecting amendment, to perfect the language of the committee amendment, which the Senator from Mississippi seeks to strike out.

The Chief Clerk. It is proposed, on page 214, at the end of line 15, to add the following proviso:

> *Provided*, That all taxes collected under this subsection upon the products of the Philippine Islands shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the treasury of the Philippine Islands. If the Philippine government by any law provides for any subsidy to be paid to the producers of copra, coconut oil, or allied products, then this proviso shall at once become null and void.

Mr. Norris. Mr. President, I take this opportunity to thank the Senator from Mississippi (Mr. Harrison) for his kindness in agreeing to lay aside the oil amendment until today.

There has been presented by the committee amendment a very serious question in which the farmers of the United States are particularly interested. They are all very much worried about bringing into this country copra and coconut oil, which interferes with the sale of fats and oils of all kinds produced here in America from cattle, hogs and so forth. A tariff tax is levied upon such products when they come here in the regular way, but the tariff tax does not apply to products from the Philippine Islands, with the result that producers there are able to escape such a tax.

Within the last year or so the administration has started on a farm-relief program. We have limited the production of all, or practically all, farm products. The farmer, concerned with that limitation, finds that fats and oils imported from the Philippine Islands do not have to pay a tax under

the tariff law, and therefore, without any tax of any kind levied upon them, come in competition with the fats and oils produced in this country. Of course with reference to oils produced elsewhere and imported into the United States there is a tariff tax.

It seems to me we are confronted with the fact that it is very difficult to do justice both to our wards, the Filipinos, and to the American farmer. When the farmer finds himself thus handicapped he is justified in the belief that he must have some protection against the importation of coconut oil and copra from the Philippine Islands which, under existing law, can be brought in without the payment of any tariff tax.

As a Senator very eloquently said yesterday, if we have to do an injustice either to the Filipinos or to the American farmer, it would be better to do that injustice to the Filipinos rather than to the American farmer. It seems to me that unless we amend the proposal of the committee, we are confronted with a situation in which we must do an injustice to one or the other. I think I speak the sentiment of the Senate when I say that when we hold the Philippine Islands without their consent under our Government, we have no moral right to levy a tariff tax upon the products of those islands as we do upon the products of foreign countries.

The processing tax which was inserted in the bill by the House provided for a tax of 5 cents a pound upon coconut oil and copra. Its effect, if unmodified, would be the same as though we had levied a tariff tax. The Government would make money out of it because the tax would be paid into the Treasury of the United States.

As one who is in favor of giving independence to the Philippine Islands just as quickly as we possibly can, I voted for every amendment to the Philippine independence bill that had a tendency to bring about that end. Those of us who felt as I did favored those amendments, and then we voted for the bill as it finally became a law.

Mr. President, my amendment in the first place provides that the revenue derived from this tax shall not be covered into the Treasury of the United States but shall be held in a separate fund and paid to the Philippine government. The

objection first raised was and is that the Philippine government could still grant a bonus or subsidy in the same amount to the producers of coconut oil and copra in the Philippines, and thus nullify the effect of our tax. In other words, if the Philippine government should do that, our tax would be absolutely of no effect so far as the importation of coconut oil and copra from the Philippines are concerned. It would not help us and it would not help the American farmer. The Philippine producer of the coconut oil and copra would be able, with a bonus of the same amount as the tax, to sell as he did before, and the American farmer would get no benefit from the tax.

To meet that objection, it is provided in my amendment that if the Philippine government at any time shall grant a bonus or subsidy for the production of coconut oil or copra, then the provision will at once become null and void and of no effect, and the producers will stand under the amendment of the committee just as it was reported.

MR. CONNALLY. Mr. President, I desire to ask the Senator a question about his amendment. Suppose the Filipino government should say, "We will take this tax, and then we will just pay it back to the producer."

MR. NORRIS. They cannot do it under the amendment.

MR. CONNALLY. The Senator's amendment would prohibit that?

MR. NORRIS. Yes, sir.

MR. CONNALLY. In other words, they could neither use the tax as a subsidy, nor could they grant an independent subsidy?

MR. NORRIS. They could not do either one.

MR. CONNALLY. If that be true, I cannot see why the amendment would not have the effect of aiding the domestic producer, because the tax would be paid, and it is immaterial from his viewpoint what is done with it, whether it is thrown in the sewer or given to the Philippine government.

MR. NORRIS. The Philippine government will get the money. They can use it in any way they want to use it, except as prohibited by the amendment itself; and that only goes so far as to say that, while they are getting this money, they must not by law provide for giving a subsidy

to the production in the Philippine Islands of copra and coconut oil.

MR. REED. Mr. President—

THE VICE-PRESIDENT. Does the Senator from Nebraska yield to the Senator from Pennsylvania?

MR. NORRIS. Let me yield first to the Senator from Iowa (Mr. Murphy), who has been trying for some time to get my attention.

MR. MURPHY. Mr. President, the Senator from Texas (Mr. Connally) has asked the question I had in mind.

MR. JOHNSON. Mr. President—

MR. NORRIS. Very well. I yield, then, to the Senator from Pennsylvania.

MR. REED. Mr. President, has the Senator considered the question whether we have power to levy a tax by a law which on its face states that the revenue is not to be taken for the American Treasury, but for the treasury of an alien government?

MR. NORRIS. No; in my judgment, we probably could not do that. I have never thought of it before; but, at first blush, I should say that if we gave the tax to an alien government, there would be something in that suggestion. We are not doing that, however. We are giving it to our wards. They are now under our Government, and we are supreme as to them. We can pass any law in that regard that we desire to pass.

MR. REED. I grant that; but I do not believe that the Federal Government has the constitutional power to levy a tax for the benefit of any other government, whether it is the government of the city of Omaha or the government of the Philippine Islands or a government set up under any other system.

MR. NORRIS. I do not agree with the Senator. I do not believe that any constitutional provision is involved here by which this tax would be nullified; and we have done the same thing in our tariff laws. We have given back, in some instances, tariffs that have been levied.

MR. REED. To other governments?

MR. NORRIS No; not to other governments.

MR. REED. Then I have another question to ask the Senator: Why is it any more unfair to the Filipinos to put a

processing tax on one of their agricultural products than it is unfair to our own farmers to put a processing tax on their products?

MR. NORRIS. I do not think it would be any more unfair.

MR. TYDINGS. Mr. President, will the Senator yield?

MR. NORRIS. In just a moment. The Philippine people are not included in the law, however. They are expressly exempted from the law that enables the Secretary of the Treasury to put a processing tax upon the people of the United States.

MR. REED. I do not agree with the Senator.

MR. NORRIS. I have the law here.

MR. REED. The law says that no tariff shall be put on their products, and this is not a tariff. It is a domestic tax; an excise.

MR. NORRIS. I will say to the Senator from Pennsylvania that I have the law here on my desk.

MR. FESS. The Agricultural Adjustment Act exempts them.

MR. BORAH. Mr. President, I found last night that the A. A. A. Act expressly exempts the Philippine Islands.

MR. NORRIS. Yes; it is done by express statute. I have it here on my desk.

MR. REED. We could extend the A. A. A. by an amendment to cover the Philippines.

MR. NORRIS. I think probably we could.

MR. BORAH. That is really what we are doing in this bill.

MR. REED. Mr. President, if the Senator will permit one more interruption, I cannot see why we owe any higher degree of fairness to the Filipino than we do to our own citizens.

MR. NORRIS. That is just what I say. I agree to that.

MR. REED. While it is true that many of these processing taxes are refunded to the American farmer, it is equally true that many of them are not.

MR. NORRIS. Yes.

MR. REED. Take, for example, the tax which has been put on paper napkins and the tax which has been put on jute bags, in order to protect cotton. Those taxes are not refunded to anybody; and why those American citizens

should be taxed and be expected not to complain, and then we should be so tender of the Filipino I cannot see.

MR. TYDINGS. Mr. President, will the Senator from Nebraska yield there?

MR. NORRIS. I will yield in just a moment.

The law exempts the Philippine Islands. That may have been wrong, but it is now the law. They are expressly exempted in the act that empowers the Secretary of Agriculture to levy a processing tax upon the American farmer.

The Senator says we ought to levy this tax on the Filipino farmer just the same. The Senator may be right, but we have not now the law under which we can do that. We might amend the law and do it. In my judgment, it is simply tantamount to saying, "Your remedy is not right. Let us take another one." I agree that probably a law might be drawn which would meet the proposition in the way the Senator has suggested, but we are not now confronted with that situation.

MR. TYDINGS. Mr. President, will the Senator yield to me?

MR. NORRIS. I yield.

MR. TYDINGS. I wish to point out the distinction between the effect of the law upon the Filipino and upon the American farmer. Before I point that out I want to say that I recognize that the Senator from Nebraska is trying to be fair with both peoples in the philosophy of his amendment. But may I point out that the processing tax on the American farmer is ostensibly a tax levied for the benefit of the American farmer, while the processing tax levied on the Filipino is a tax, not for the benefit of the Filipino but of the American farmer. If the Filipino were coming in upon the same plane with the American farmer, I would have no protest at all, but as I see it, we are asked to compel him to do something which we do not compel the American farmer to do, while they are all Americans.

MR. BORAH. Mr. President—

The presiding Officer (Mr. O'Mahoney in the chair)

Does the Senator from Nebraska yield to the Senator from Idaho?

MR. NORRIS. I yield.

MR. BORAH. May I suggest to the Senator from Maryland that while the processing tax is, as he says, "ostensibly" for the benefit of the American farmer, as a practical fact, it would have exactly the same effect upon the American farmer as upon the Filipino.

MR. TYDINGS. I think there is much in the Senator's contention but I simply wanted to point out that the purpose is different.

MR. NORRIS. I think there is something in the contention, but the suggestion that has come from the Senator from Pennsylvania is simply to this effect, as I see it: "I am opposed to your remedy, I am opposed to doing it that way; I want to do it some other way." He may be right about that; there may be a better way, but faced as we are with the pending bill, it would be folly to stop its consideration long enough to frame a statute that would carry it out in the other way. There would be a great difficulty. At the time we framed the statute we expressly exempted the Philippine Islands and had in mind as one of the things, the suggestion that has so well been made by the Senator from Maryland.

MR. REED. Mr. President, will the Senator yield to me?

MR. NORRIS. I yield.

MR. REED. The amendment as reported by the Committee on Finance expresses exactly, to my mind, the fair way of accomplishing the desired result. It imposes a processing tax of 3 cents a pound directly on the competing oils.

MR. NORRIS. The Senator's contention, as I see it, is just the same as though we levied a tax on the products of the Philippine Islands. Technically we could do that; legally we could enact that kind of a law and enforce it. Morally, it would be wrong. I myself have always opposed the levying of tariffs upon the products of the Philippine Islands, particularly when we take into consideration the fact that we are holding them under our government without their consent. It is so abhorrent to think that under those conditions we should levy a tariff tax that I would like to find some way to help the American farmer without resorting to that kind of a remedy.

MR. BORAH. Mr. President, will the Senator yield?

MR. NORRIS. I yield.

MR. BORAH. I know what the Senator has in mind, and I am in entire sympathy with it, but the trouble is that we are asked to hand back to the Government that which we are to take away from the citizen. It does not seem to me that that meets the proposition of dealing fairly with the people.

MR. ROBINSON of Arkansas. Mr. President, to give the subsidy to the Philippine government does not help their trade; it does not help their production, and it does not help the people directly.

MR. NORRIS. Mr. President, the suggestion made by the Senator from Idaho (Mr. Borah) is correct. What is the object of all this legislation? What is the object of all our farm legislation? It is to increase the prices of the products of the farmer. This amendment would have that effect, I admit. It would raise the price to the consumer of these oils. There is no doubt about that. That is the object we have in view. If the Senator's suggestion is correct, then we must let our farmers suffer under this unjust situation, because we cannot meet it without increasing the price to somebody else.

APPENDIX 8

Provisions of Sections 602 and 602½ (Subsections [a] and [g]) of the Revenue Act of 1934 at the Various Stages of the Measure

1. The following was the form of Section 602 of the bill as introduced in the House of Representatives, February 9, 1934:

> "(a) There is hereby imposed upon the first domestic processing of coconut oil or sesame oil, or of combinations or mixtures brought into the United States in chief value of either or both such oils, a tax of 5 cents for each pound thereof processed, which shall be paid by the processor. For the purposes of this section, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed.
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> . . . . . .
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> "(g) All collections under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

(As introduced, the bill contained no Section 602½.)

2. The Committee on Ways and Means reported the bill out on February 12, 1934, without change. (House Report 704, 73d Congress, Second Session.)

3. On February 21, 1934, the bill passed the House of Representatives without change.

4. On February 22, 1934, the bill was referred to the Senate Committee on Finance and reported out on March 28, 1934. (See explanation of change made by said Committee in Section 602 in Senate Report 558, 73 Congress, Second Session, page 52.)

The following is the form of Section 602, subsections (a) and (g), as reported out by the Senate Committee on Finance (there was still no Section 602½ in the bill):

> "Section 602. (a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, or palm oil, or palm kernel oil, or sunflower oil, or imported whale oil, or imported fish oil, or imported marine-animal oil, or of combinations of such oils or of mixtures containing substantial quantities of any one or more of such oils, a tax of 3 cents per each pound thereof processed, which shall be paid by the processor. For the purposes of this section, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.
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> . . . .
>
> "(g) All collections under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

5. The following is the form of Section 602 (a) and (g) as amended in and passed by the Senate (there was still no section numbered "602½"):

> "(a) There is hereby imposed upon the first domestic processing of coconut oil, or sesame oil, or palm oil, or palm kernel oil, or sunflower oil, or imported whale oil, or imported fish oil (excepting cod and cod liver oil), perilla oil, or imported marine-animal oil, or of combinations of such oils or of mixtures containing substantial quantities of any one or more of such oils, a tax of 3 cents per each pound thereof processed, which shall be paid by the processor. For the purposes of this section, the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is

imposed, but does not include the use of palm oil in the manufacture of tin plate: Provided, That all taxes collected under this subsection upon the products of the Philippine Islands shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the Treasury of the Philippine Islands. If the Philippine Government, by any law, provides for any subsidy to be paid to the producers of copra, coconut oil, or allied products, then this proviso shall at once become null and void.

. . . . . .

"(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

6. On April 17, 1934, the House refused to concur in the Senate's amendments, and appointed members of a Conference Committee. (See Congressional Record Vol. 78, 73d Congress, 2d Session, Part 6, p. 6776.)

7. On the same day the Senate insisted upon its amendments and appointed members of Conference Committee. (See page 6711 of said Congressional Record.)

8. On May 1, 1934, the Conference Committee made its report and explanation of same. See pages 7815-7826 of said Congressional Record and House Report 1385, 73d Congress, 2d Session.

The following was the form of Section 602 and Section 602½ (a) and (g) as reported out by the Conference Committee, and, as the Committee's Report was accepted by both Houses, the following is form as finally enacted and approved on May 10, 1934:

"Section 602. Tax on Certain Oils.

Section 601(c) of the Revenue Act of 1932 is amended by adding at the end thereof a new paragraph as follows:

'(8) Whale oil (except sperm oil), fish oil (except cod oil, cod-liver oil, and halibut-liver oil), marine animal oil, and any combination or mixture containing a substantial quantity of any one or more of such oils, 3 cents per pound. The tax on the articles described in this paragraph shall apply only with respect to the importation of such articles after the date of the enactment of the Revenue Act of 1934, and shall not be subject to the provisions of subsection (b) (4) of this section (prohibiting drawback) or section 629 (relating to expiration of taxes).' ''

''Sec. 602½. Processing tax on certain oils.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this act, or (D) was purchased under a bona fide contract entered into

prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

. . . . . .

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States."

APPENDIX 9

Letter of President of the United States to Congress requesting reconsideration of coconut oil processing tax provisions of Revenue Act of 1934

"May 28, 1934.

"TO THE CONGRESS OF THE UNITED STATES:

Early in the present session of the Congress the Philippine Independence Act was passed. This Act provided that after the inauguration of the new interim or commonwealth form of government of the Philippine Islands, trade relations between the United States and the Philippine Islands shall be as now provided by law. Certain exceptions, however, were made. One of these exceptions required levying on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of 448,000,000 pounds, the same rates of duty now collected by the United States on coconut oil imported from foreign countries.

It is, of course, wholly clear that the intent of the Congress by this provision was to exempt from import duty 448,000,000 pounds of coconut oil from the Philippines.

Later in the present session, the Congress in the Revenue Act imposed a 3-cent per pound processing tax on coconut oil from the Philippines. This Act, was, of course, directly contrary to the intent of the provision in the Independence Act cited above.

During this same period, the people of the Philippine Islands through their legislature accepted the provisions of the Independence Act on May 1, 1934.

There are three reasons why I request reconsideration by the Congress of the provisions for a 3-cent per pound processing tax.

First, it is a withdrawal of an offer made by the Congress of the United States to the people of the Philippine Islands.

Second, enforcement of this provision at this time will produce a serious condition among many thousands of families in the Philippine Islands.

Third, no effort has been made to work out some form of compromise which would be less unjust to the Philippine people and at the same time attain, even if more slowly, the object of helping the butter and animal fat industry in the United States.

I, therefore, request reconsideration of that provision of the Revenue Act which relates to coconut oil in order that the subject may be studied further between now and next January, and in order that the spirit and intent of the Independence Act be more closely followed.

(Signed) FRANKLIN D. ROOSEVELT."

FILE COPY

No. 659

In the Supreme Court of the United States

OCTOBER TERM, 1936

THE CINCINNATI SOAP COMPANY, A CORPORATION UNDER THE LAWS OF OHIO, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 659

THE CINCINNATI SOAP COMPANY, A CORPORATION UNDER THE LAWS OF OHIO, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES

We do not oppose the granting of a writ of certiorari in this case.

The sole question presented is the constitutionality of the taxes on the processing of Philippine coconut oil levied by Section 602½ of the Revenue Act of 1934. The District Court, holding the taxes to be constitutional, sustained a demurrer to the petition which sought recovery of taxes paid under that Act.

While we believe the District Court's decision is entirely correct, we feel that the public interest will be promoted by an early determination by this Court of the constitutionality of these taxes. Sec-

tion 602½ of the Revenue Act of 1934 provides that all taxes collected under that section with respect to Philippine coconut oil shall be held as a separate fund and paid to the Treasury of the Philippine Islands. Because of this provision an early final determination of the constitutionality of this statute is of vital importance to the people of the Philippine Islands and is important to the proper discharge by the United States of the authority, duties, and obligations retained by it under the Act of March 24, 1934, c. 84, 48 Stat. 456; U. S. C., Title 48, Secs. 1231–1247, which provides for the ultimate independence of the Philippine Islands.

It should be noted that the constitutionality of this tax is also at issue in the case of *Haskins Bros. & Co.* v. *O'Malley*, No. 687, which is pending before this Court on petition for a writ of certiorari.

Respectfully submitted.

STANLEY REED,
Solicitor General.

JAMES W. MORRIS,
Assistant Attorney General.

SEWALL KEY,
F. A. LESOURD,
Special Assistants to the Attorney General.

FEBRUARY 1937.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 659

THE CINCINNATI SOAP COMPANY, A CORPORATION UNDER THE LAWS OF OHIO, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 23) is not reported.

JURISDICTION

The order of the District Court was entered on January 5, 1937 (R. 22). An appeal was prayed for in the Circuit Court of Appeals for the Sixth Circuit on January 5, 1937 (R. 24), and was allowed on the same day (R. 25). A petition for a writ of certiorari was filed in this Court prior to hearing or submission of the appeal in the Circuit

Court of Appeals, and was granted on February 15, 1937 (R. 31). The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 602½ (a) of the Revenue Act of 1934, imposing a tax of three cents per pound upon the processing of Philippine coconut oil, is a valid exercise of the taxing power of Congress.

STATUTES AND OTHER MATERIAL INVOLVED

Section 602½ of the Revenue Act of 1934, c. 277, 48 Stat. 680, and relevant sections of the Constitution of the Philippine Islands are set forth in the Appendix, *infra*, pp. 61–72.

STATEMENT

On July 6, 1936, the Cincinnati Soap Company, petitioner herein, filed a petition at law in the United States District Court for the Southern District of Ohio (R. 1), praying recovery against respondent in the sum of $995.85. On September 28, 1936, an amended petition was filed (R. 17–21). On October 9, 1936, respondent filed a demurrer to the petition, as amended, on the ground that the petition, as amended, failed to state a cause of action (R. 21–22). The allegations of the petition, as amended, which are admitted by the demurrer, may be summarized as follows:

The Cincinnati Soap Company is a corporation under the laws of the State of Ohio, with its prin-

cipal office and place of business at Cincinnati, Ohio (R. 1). It is now, and has for many years, been engaged in the business of manufacturing toilet and other soaps at its manufacturing plant at Dayton, Ohio (R. 3).

During the month of January 1935, petitioner used in manufacturing soap 33,195 pounds of coconut oil, wholly the production of the Philippine Islands. Pursuant to Section 602½ of the Revenue Act of 1934, *infra*, pp. 61–64, petitioner filed a return and paid to the respondent a tax of three cents per pound on the processing of this oil. The total amount of this tax was $995.85 (R. 2). On January 7, 1936, petitioner filed with the Bureau of Internal Revenue its claim for the refund of the tax upon the ground that it was unconstitutional (R. 2, 13–14). The claim was denied by the Commissioner of Internal Revenue on May 14, 1936.[1] An amended claim was filed on July 6, 1936, and denied by the Commissioner of Internal Revenue on July 28, 1936 (R. 17).

On January 5, 1937, the District Court entered an order sustaining the demurrer and entered judg-

[1] The petition contains further allegations with respect to the use of coconut oil in the manufacture of plaintiff's soap (R. 3, 5), the mode by which coconut oil is transported from the Philippine Islands to its plant (R. 3–4), the details of the history of the Philippine Independence Act and the proceedings thereunder (R. 5–6), as well as many legal conclusions as to the invalidity of the tax (R. 6–10). To the extent that these further allegations are material, they are referred to in the argument, *infra*.

ment for respondent (R. 22). A petition for an appeal was filed and allowed on January 5, 1937 (R. 24, 25). Before argument or submission of the case in the Circuit Court of Appeals a petition for a writ of certiorari was filed and was allowed on February 15, 1937 (R. 31).

SUMMARY OF ARGUMENT

I

A. Section 602½ of the Revenue Act of 1934 imposes a valid tax on the processing of Philippine coconut oil. The tax does not violate the Tenth Amendment. The act is not regulatory in any way, either in the incidence of the tax or in the expenditure of the proceeds, but, on the contrary, is designed to and does operate simply as a tax-producing revenue measure.

B. The motives which inspired Congress to pass the tax are immaterial, whether or not they may be inferred from the face of the act. *Hampton & Co.* v. *United States,* 276 U. S. 394; *McCray* v. *United States,* 195 U. S. 27. It is the settled doctrine of this Court that a non-fiscal purpose will not invalidate an act, as long as Congress has sought to achieve that purpose merely through the levy and collection of a tax, which is intended to and does raise revenue, and has not attempted to achieve it by the exercise, in the guise of a taxing act, of some different power not possessed.

C. Moreover, even if the non-fiscal motive of Congress be deemed material, the motive here was

protection of domestic producers from competition from sources outside continental United States in furtherance of the tariff policy, and this is a valid purpose for the exercise of the Federal taxing power. *Hampton & Co.* v. *United States,* 276 U. S. 394. The Constitution specifically deprives the states of the power of granting this protection and vests authority over that entire field in Congress. Cf. *United States* v. *Curtiss-Wright Export Corp.,* No. 98, decided December 21, 1936. Consequently, when Congress exercises its powers for the purpose of affording that protection, it cannot be said that Congress is attempting to invade a field reserved to the states by the Tenth Amendment.

II

The act does not violate the Fifth Amendment. The tax is not retroactive and contains no arbitrary provisions. *Brushaber* v. *Union Pacific R. R.,* 240 U. S. 1, 24. The Fifth Amendment is not violated by the fact that the purpose to which the proceeds are to go is stated in the taxing act, as long as that purpose is proper under the Constitution. *Downes* v. *Bidwell,* 182 U. S. 244. There is no violation of the constitutional requirement regarding appropriations, since this money is paid into a trust fund in the Treasury, from whence it is paid under regular appropriation acts.

For many years, taxes have been imposed in this country on products coming from insular possessions, the proceeds of which have been earmarked

for those possessions, and this Court has specifically upheld those taxes. *Downes* v. *Bidwell*, 182 U. S. 244. A tax is no less a revenue measure because imposed to raise revenue for a specific purpose. Nor is it necessary that a particular taxpayer receive a direct benefit from the use of the money for that purpose, as long as it is a proper governmental purpose which has as its object the welfare of all. If, however, direct benefit were necessary, petitioner, being dependent upon oil from the Philippines, is directly benefited by the expenditure of money to assist in maintaining a stable government in those Islands.

III

Petitioner, to demonstrate the invalidity of the instant tax because of the provisions for payment of the proceeds to the Philippine Islands, must demonstrate two propositions: (A) That such an appropriation of funds would be invalid; *and* (B) that the earmarking is inseparable from the tax. We submit that neither proposition can be supported.

A

1. Assuming, as petitioner insists, that the provision for payment of the proceeds of this tax to the Philippine Islands was inserted in order to discharge a moral obligation arising from an alleged breach of the Philippine Independence Act, nevertheless the provision is clearly constitutional. This Court has held that Congress has the power

to recognize and authorize the payment of moral obligations of the United States. *United States* v. *Realty Co.*, 163 U. S. 427, 440.

2. The Philippines were acquired by the United States and became a territorial possession under the power of Congress. Having thus acquired the Islands, Congress was authorized by the Constitution to take whatever measures were necessary to promote their welfare. From the beginning of our government Congress has exercised the power of appropriation for the benefit of various territorial possessions, and has never assumed that the Philippine Islands were to be considered as in a separate class. The fact that the Islands have been largely self-supporting is material only with respect to the *need* for financial assistance, and not with respect to the *power* of Congress to render it if necessary.

Indeed, a series of statutes, beginning with the Act of March 8, 1902, are almost identical with the present act. Those statutes have been continuously in effect since that time, and under them payment of large sums of money to the Islands have been made.

3. Nor has the institution of the Commonwealth Government in the Philippine Islands changed the power to appropriate funds to the Insular Treasury. During the ten-year Commonwealth period the Philippine Islands are clearly not an independent nation, as is evidenced by the provisions of the Independence Act, the Philippine Constitution,

and the statements of the Executive branch of the government of the United States. Petitioner cites no authority to indicate that the additional powers of self-government granted the Islands during this period affects the power of Congress to appropriate for them. Moreover, petitioner ignores the realities of the situation. Both the Independence Act and the instant tax seriously affect the economic welfare of the Islands, and Congress may well have decided that the disturbing effects of these two measures warranted the economic relief afforded by this provision.

4. Even assuming, *arguendo,* that the Philippine Islands are a foreign country, nevertheless the provision for payment would be valid. In the field of foreign affairs the Federal Government possesses plenary power (*United States* v. *Curtiss-Wright Export Corp., supra*), including the power to appropriate money for whatever purposes are deemed necessary or desirable. Indeed, the matter of the desirability of an appropriation should properly be considered a political question. Compare *Luther* v. *Borden,* 7 How. 1.

B

In any event, the validity of the payment to the Philippines is immaterial to the present case because it is separable from the tax here imposed. The legislative history of the Revenue Act of 1934 demonstrates that the Congress would have levied the tax, even though it could not have made the

payment. This is also shown by a separability clause contained in the Revenue Act and by the proviso in Section 602½ that the payments, but not the tax, shall stop under certain circumstances. *United States* v. *Butler,* 297 U. S. 1, is not to the contrary.

ARGUMENT

Section 602½ (a) of the Revenue Act of 1934 (*infra,* pp. 61–62) imposes a tax of three cents per pound on the first domestic processing of coconut oil, sesame oil, palm oil, palm-kernel oil, and sunflower oil.[2] The section provides (subsection (g)) that all collections under it shall be covered into the general funds of the Treasury of the United States, except such proceeds as are received from the processing of Philippine coconut oil.[3] These proceeds are to be held in a separate fund and paid into the Treasury of the Philippine Islands. Subsection (a). The section further provides that

[2] An additional tax of two cents per pound is levied by the same section upon the first domestic processing of all coconut oil *except* (1) oil from the Philippines or any other possession of the United States; (2) oil produced from materials wholly from the Philippines or other possession of the United States; (3) oil brought into the United States before a specified date; or (4) oil purchased under a contract entered into before a specified date. Oil used by petitioner is exempted from this tax by (1), *supra.*

[3] "Philippine coconut oil" is used in this brief to designate both coconut oil wholly of Philippine production and coconut oil produced from materials wholly of Philippine growth or production. For the purposes of the present tax the two classes of oils may be treated alike.

should the Philippine Government at any time provide by law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments shall be made to the Philippines. Subsection (a).

Petitioner, who has paid a tax of three cents per pound upon coconut oil, pursuant to this section, now seeks to recover it on the ground (1) that it is not a valid tax but a measure regulating intrastate manufacturing and production in violation of the Tenth Amendment to the Constitution; (2) that it is an expropriation of property without due process of law in violation of the Fifth Amendment; and (3) that it is rendered invalid by the provision for the payment of the proceeds to the Philippine Islands. We submit that the tax is a valid exercise of the taxing power of Congress. We shall deal with petitioner's objections in the order stated.

I

THE TAX HERE IMPOSED DOES NOT VIOLATE THE TENTH AMENDMENT

A. *The act is not regulatory*

The tax which is here attacked is, on its face, simply an ordinary manufacturer's excise containing the usual provisions relating to imposition and collection generally found in similar acts. Section 602½ (b). The tax is on processing, a manufacturing operation and a common subject of Federal taxation. Like all revenue measures, the statute origi-

nated in the House of Representatives. The tax is a part of the Revenue Act of 1934, which had as its purpose the raising of revenue for the support of the Government. The section is so constructed that it is capable of producing, and does in fact produce, revenue in substantial amounts.[4] The collections under this act compare favorably with the annual revenues derived from other Federal excise taxes, some of which have been specifically upheld by this Court. In fact, only a few of the many Federal excises produce more.[5]

Neither in the imposition of the tax nor in the expenditure of the proceeds is this act regulatory in operation. No rules relating to conduct of business or local affairs are set forth and departures therefrom penalized, as in the *Child Labor Tax Case*, 259

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[4] Between July 1, 1934, and January 31, 1937, the tax collections under Section 602½ were as follows:

Sesame, 3 cents per lb	$3,428,587.13
Palm, 3 cents per lb	17,321,891.81
Palm kernel, 3 cents per lb	3,206,878.09
Sunflower, 3 cents per lb	430,154.45
Combinations of the above oils, 3 cents per lb	197,929.36
Coconut, other than listed below, 5 cents per lb	40,278.70
Combinations containing coconut oil (other than listed below), 5 cents per lb	493,778.98
From Philippine coconuts, 3 cents per lb	44,336,506.19
Oil from coconuts produced in other U. S. possessions, 3 cents per lb	525,835.82
Foreign coconut oil with contract or time limit exemption, 3 cents per lb	485,136.60
Fatty acids, 3 cents per lb	16.58
Salts, 3 cents per lb	13.02
	70,467,006.73

[5] See the *Annual Report of the Commissioner of Internal Revenue for the Fiscal Year ended June 30, 1936*, p. 22.

U. S. 20, and *Hill* v. *Wallace*, 259 U. S. 44. The tax is not inflicted as punishment for violations of law, as in *United States* v. *Constantine*, 296 U. S. 287, nor is the tax levied on one transaction and its amount made to depend upon the exercise of other privileges protected by the Constitution and not within the regulatory powers of the legislative body, as in *Grosjean* v. *American Press Co.*, 297 U. S. 233. The amount of tax paid under this act on the processing of Philippine coconut oil depends solely on the quantity of oil processed.

Nor is there here a program of regulation to be accomplished by the spending of money, as was found by this Court in *United States* v. *Butler*, 297 U. S. 1. The proceeds are to go to the Treasury of the Philippine Islands without any restrictions whatsoever. The proviso that payments are to cease if the Philippines provide by law for the payment of subsidies to producers of coconut oil and copra in the Islands is not regulatory, but relates merely to the use of the money to be appropriated. In fact, petitioner attacks the provision for payment to the Philippines on the ground that Congress did not impose sufficient regulation with regard to the expenditure (Br. p. 58). We shall hereafter show, pp. 35–58, that the provision for payment to the Philippines is entirely valid. At this time we simply wish to point out that there is in this act no regulation, either in the operation of the tax or in the expenditure of the money, which would offend the Tenth Amendment.

B. *The motives which inspired Congress to pass the tax are immaterial*

This act, then, is constructed and operates as an ordinary excise tax, and is not, in its construction or operation, regulatory in any way. Petitioner argues, however, that the purpose of Congress in enacting the tax was to protect domestic producers of oils and fats, and that the existence of this purpose invalidates the tax.

Every tax which is imposed bears witness to some economic, social, or moral policy or purpose of the legislature in addition to the general policy of raising revenue. Even the choice of subjects of taxation involves a consideration of the effect of the tax burden upon the individuals and the state. In fact, equity and good statesmanship may often require that a tax system reflect purposes having little or no relation to fiscal matters. To quote Mr. Justice Holmes in *Pacific Fisheries* v. *Alaska*, 269 U. S. 269, 277:

> At least we must take it to be clear that the unlimited power [of taxation] expressly given may be exercised with consideration of collateral advantages and disadvantages. *Alaska Fish, Etc., Co.* v. *Smith*, 255 U. S. 44, 48. It could not be exercised intelligently otherwise.

Cf. *Rast* v. *Van Deman & Lewis*, 240 U. S. 342, 357; *Citizens' Telephone Co.* v. *Fuller*, 229 U. S. 322, 331.

For this reason, this Court has repeatedly held that the motives which persuade Congress to pass a tax are wholly immaterial and will not be inquired into. *McCray* v. *United States,* 195 U. S. 27; *In re Kollock,* 165 U. S. 526, 536; *United States* v. *Doremus,* 249 U. S. 86, 93–94; *Alston* v. *United States,* 274 U. S. 289; *Nigro* v. *United States,* 276 U. S. 332; *Alaska Fish Co.* v. *Smith,* 255 U. S. 44; *Magnano Co.* v. *Hamilton,* 292 U. S. 40, 44; *Quong Wing* v. *Kirkendall,* 223 U. S. 59; *Billings* v. *United States,* 232 U. S. 261; *Hampton & Co.* v. *United States,* 276 U. S. 394; *Fox* v. *Standard Oil Co.,* 294 U. S. 87, 100; *Treat* v. *White,* 181 U. S. 264, 269; *Southwestern Oil Co.* v. *Texas,* 217 U. S. 114, 126–127; *Tax Commissioners* v. *Jackson,* 283 U. S. 527; *Veazie Bank* v. *Fenno,* 8 Wall. 533.

Petitioner argues, however, that the legislative history of this tax shows clearly that the dominant purpose of Congress was the raising of domestic prices. Assuming, *arguendo,*[6] that such was the

[6] The difficulties of ascertaining the "dominant" purpose of Congress are illustrated by the present Act. On the face of the Act, the raising of revenue was represented by Congress as being the dominating purpose. The Committee reports treat the Act as an ordinary taxing measure and disclose no other purpose. House Rep. No. 704, 73d Cong., 2d Sess., p. 41; Senate Rep. No. 558, 73d Cong., 2d Sess., p. 52; House Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 30. In the hearings before the Ways and Means Committee (Hearings on Revenue Revision, 1934, 73d Cong., 2d Sess., p. 579, *et seq.*), those advocating the tax stressed the need for protection to the American oil and fat producers from foreign oils, but they also stressed the importance of the revenue

dominant purpose, it would not comport with the respect due the representations of a coordinate branch of the Government if, in considering the purpose of an Act which states its purpose to be the raising of revenue, this Court were to weigh the remarks of individual legislators and the arguments of various interested persons to decide that question.[7] Legislators, in weighing and debating

to be received. *Id.* 580, 605, 695, 712. During the hearings before the Senate Committee on Finance (Hearings on the Revenue Act of 1934, H. R. 7835, 73d Cong., 2d Sess.), the main witness appearing for all the proponents of this tax stressed the revenue to be received as the most important objective of the tax. (Pp. 318, 338, 345.) Moreover, the members of the committee showed a very distinct interest in the amount of revenue to be produced by the tax. (Confidential Hearings of the Committee on Finance of the United States Senate on H. R. 7835, Part 1, p. 3; Part 5, p. 170.) Also the desirability of the tax was stressed as a means of more equitable distribution of the tax burden, on the ground that the production of domestic oils and fats paid its share of the tax burden through the general Federal taxes on the producers, while the Philippine oils did not contribute to the support of the Government. (*Id.* Part 5, pp. 167, 171; Public Hearings on H. R. 7835, p. 312.) It is further significant, as showing that revenue was in mind, that the original rate of five cents per pound as proposed by the Ways and Means Committee was reduced in conference to three cents. (House Conference Rep. No. 1385, 73d Cong., 2d Sess., p. 30.)

[7] "The arguments of individual legislators are no proper subject for judicial comment. They are so often influenced by personal or political considerations, or by the assumed necessities of the situation, that they can hardly be considered even as the deliberate views of the persons who make them, much less as dictating the construction to be put upon the Constitution by the courts." *Downes* v. *Bidwell*, 184 U. S. 244, 254.

the economic, social, or moral aspects of tax legislation certainly are not to be forced to take care that no statements reach the pages of the Congressional Record or the Committee reports. It cannot possibly be material to the validity of a revenue measure that its non-fiscal advantages and disadvantages were thoroughly considered and debated by Congress, instead of ignored.

Petitioner argues, however, that even conceding the foregoing argument, nevertheless the non-fiscal purpose of the present Act should be considered by this Court because the provision for payment to the Philippines of all the proceeds, and the proviso thereto (see pp. 9–10, *supra*), are proof of this purpose on the face of the Act. There are two answers.

First, it is by no means clear that these provisions furnish the proof which petitioner argues that they do. Their *fiscal* purposes may, in other words, have been equally important in the mind of Congress. Inasmuch as petitioner's argument must be bottomed on the fact that they can have no possible fiscal purpose, it is necessary to show only that they *may* have been deemed by Congress to be necessary to the *fiscal* purposes of Section 602½. See *United States* v. *Doremus*, 249 U. S. 86, 93, 95; *Alexander Theater Ticket Office* v. *United States*, 23 F. (2d) 44, 48 (C. C. A. 2d).

Obviously, the Section as a whole was intended to raise revenue by a tax upon several classes of oils, all of which compete with each other for both edible

and non-edible purposes in the United States.[8] A tax upon some of the oils and not upon the others might well have resulted, therefore, in materially lessened revenue, because the untaxed, and hence cheaper, oils would be preferred. Consequently, a tax on all oils may well have been considered by Congress to be necessary for revenue purposes.

This tax on all oils, however, was alleged to violate at least the spirit of the Philippine Independence Act, in which we had set for ten years an annual 200,000 long ton duty-free quota of Philippine coconut oil. Consequently, in order to obtain the considerable revenues derived from the taxes on other oils, and from the taxes on coconut oil not of Philippine production,[9] and at the same time to avoid even the appearance of a breach of faith, the provision for paying the proceeds from the tax on Philippine coconut oil to the Islands was added. The proviso was necessary in order to prevent the Philippine Islands, by bounties, from distorting or destroying the balance which Congress had fixed by Section 602½ among the taxed oils, and between oil from the Philippines and from other possessions of the United States and foreign countries.

Apart from the fact that the provision may well have had a fiscal rather than, or as well as, a non-fiscal purpose, petitioner's contention is open to the further objection that it assumes that *any* evi-

[8] See United States-Philippine Trade (U. S. Tariff Commission, 1937), p. 95.

[9] See p. 11, *supra*.

dence of a non-fiscal purpose on the face of a tax statute *ipso facto* renders its purpose open to review by the courts. The decisions of this Court are clearly to the contrary.

The leading decision is probably *Hampton & Co.* v. *United States,* 276 U. S. 394, in which the validity of the Tariff Act of 1922, c. 356, 42 Stat. 858, was challenged with respect to the "flexible" tariff provision. Under that Act, the President was authorized, subject to certain limitations, to effect changes in tariff rates to equalize the differences between the costs of producing articles in the United States and in principal competing countries. Several factors which were to be considered by the President were specified in the Act. The provision was in fact, *and was declared by the Act itself to be,* an elaborate plan to protect and foster the production of American goods. It was therefore contended that the Act was unconstitutional, since the power of Congress in levying customs duties might be exercised only for revenue purposes. The Court rejected that contention, saying (pp. 412–413):

> So long as the motive of Congress and the effect of its legislation are to secure revenue for the benefit of the general government, the existence of other motives in the selection of subjects of taxes cannot invalidate Congressional action. * * *
>
> * * * the fact that Congress *declares* that one of its motives in fixing the rates of

> duty is so to fix them that they shall encourage the industries of this country in the competition with the producers in other countries in the sale of goods in this country cannot invalidate a revenue act so framed. * * * [Italics supplied.][10]

If a *declared* purpose to benefit home industries does not invalidate a revenue statute, it is difficult to see how petitioner's *inference* of the same non-fiscal purpose in the present section can be deemed sufficient warrant for an investigation of that purpose in the present case.

Many other cases may be cited which dealt with statutes where the non-fiscal motives could be inferred from the face of the act much more certainly than they can here. In *McCray* v. *United States, supra,* a tax on yellow oleomargarine *forty* times as high as that on white indicated clearly a collateral motive for the tax. Indeed, a collateral motive was stated in the taxing act. In *Veazie Bank* v. *Fenno, supra,* a ten percent tax on state bank notes was obviously prohibitive and intended for only one purpose—to remove state bank notes from

[10] Tariffs may be supported not only under the revenue power but also under the power to regulate foreign commerce. *Cf. Board of Trustees* v. *United States*, 289 U. S. 48, 58; *United States* v. *Butler*, 297 U. S. 1, 63. However, the latter power was not relied upon in the *Hampton* decision. Moreover, the impelling motive to protect domestic industry was no more within Congressional power over foreign commerce than it was within the taxing power, and the Court's decision in upholding the Act is none the less applicable here.

existence. In *United States* v. *Doremus, supra,* the moral purpose of the tax on opium was frankly recognized by this Court (p. 94). Yet in all of these cases the Court held the non-fiscal purposes to be immaterial. See, also, *Crocker* v. *Malley,* 249 U. S. 223, 234; *Alaska Fish Co.* v. *Smith, supra; Alexander Theatre Ticket Office* v. *United States,* 23 F. (2d) 44 (C. C. A. 2d); *McKenna* v. *Anderson,* 31 F. (2d) 1016 (C. C. A. 2d), certiorari denied, 279 U. S. 869; Story, *Commentaries on the Constitution* (5th ed.), Sec. 965. Cf. *Magnano Co.* v. *Hamilton, supra.*

These cases demonstrate the settled doctrine of this Court to be that non-fiscal purposes will not destroy the validity of an act as long as Congress has sought to achieve those purposes merely through the levy and collection of a tax and has not attempted to achieve them by the exercise of some different power not possessed. Constitutionality depends upon what the act is, not on the reasons for its enactment. If the operative provisions deal with the raising of revenue and the act is in operation and effect a tax which actually raises revenue, it matters not that the reason Congress imposed the particular tax on the particular subject is to be found in considerations of public policy unrelated to fiscal matters.

C. In any event, even if the motives of Congress be considered, they do not invalidate the tax.

Nevertheless, even if the validity of the tax were to be judged by the motives actuating Congress, we

believe it settled by a century and a half of practice, expressly approved by this Court, that Congress may levy taxes with the end in view of encouraging domestic producers by protecting them from outside competition.

The power of Congress to impose particular taxes in an effort to protect home industry was fully considered by this Court in *Hampton & Co. v. United States, supra.* The Court said (pp. 411–413):

> It is contended that the only power of Congress in the levying of customs duties is to create revenue, and that it is unconstitutional to frame the customs duties with any other view than that of revenue raising. It undoubtedly is true that during the political life of this country there has been much discussion between parties as to the wisdom of the policy of protection, and we may go further and say as to its constitutionality, but no historian, whatever his view of the wisdom of the policy of protection, would contend that Congress, since the first revenue Act, in 1789, has not assumed that it was within its power in making provision for the collection of revenue, to put taxes upon importations and to vary the subjects of such taxes or rates in an effort to encourage the growth of the industries of the Nation by protecting home production against foreign competition. * * * Whatever we may think of the wisdom of a protection policy, we cannot hold it unconstitutional.

It may be urged that the customs duties which were held valid in the *Hampton* case may be supported under the commerce power, and that, consequently, the decision is not in point here. But the decision was not rested upon the commerce power, but upon the taxing power. Moreover, this Court has referred to the validity of protective tariffs in sustaining internal taxes with a non-fiscal motive. In *Alaska Fish Co.* v. *Smith*, 255 U. S. 44, the Court said (p. 48):

> If Alaska deems it for its welfare to discourage the destruction of herring for manure and to preserve them for food for man or for salmon, and to that end imposes a greater tax upon that part of the plaintiff's industry than upon similar use of other fish or of the offal of salmon, it hardly can be said to be contravening a Constitution that has known protective tariffs for a hundred years.

The importance of the *Hampton* decision on the issue of the constitutionality of the act at bar, however, does not depend upon whether Congress, in enacting tariff laws, is exercising its power over commerce or its power of taxation. The importance is that the case recognizes that Congress may validly exercise powers granted it by the Constitution for the purpose of protecting domestic industry. We do not argue that the present act is an exercise of the commerce power. We urge that it is an exercise of the taxing power. Assuming petitioner's contentions to be correct, it is an exer-

cise of the taxing power in furtherance of the Government's tariff policy, a policy that has been the established practice of our Government ever since its inception. Congress may not, of course, under its commerce power enact a law requiring a manufacturer to use domestic oils, any more than Congress could do so under its taxing power. But Congress may, under the commerce power, exercise its right to regulate imports with the purpose of accomplishing that result, and likewise, we insist, Congress may exercise its taxing power by imposing an ordinary manufacturer's excise with the same purpose.

Petitioner, although objecting in this proceeding to the use by Congress of its powers to protect the domestic producers of oils and fats, is, at the same time, enjoying the benefits of the use by Congress of its powers to protect petitioner and other manufacturers of soap in continental United States from outside competition. See Act of June 17, 1930, c. 497, 46 Stat. 590, Title I, Schedule I, Sec. 1, par. 80 (U. S. C., Title 19, Sec. 1001), imposing a tariff on that product. This tariff has existed for a number of years. See Act of September 21, 1922, c. 356, 42 Stat. 858, Sec. 1, par. 82.

The protection of producers in this country from outside competition is peculiarly within the field of activity of the Federal Government under the Constitution and the Tenth Amendment thereto. Over all matters pertaining to external affairs the Federal Government has been vested with full and

complete authority. The differences in our dual system between actions relating solely to internal matters and actions having to do with foreign policy are so great that the power of the Federal Government over the latter has been held to stem not only from the specific grants of the Constitution, but also directly from the Crown of England as a necessary concomitant of sovereignty. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936.

The exclusive right of the Federal Government to formulate and carry out policies having to do with our external relations has particular force in the fields of commerce and importation of goods. By reason of Article I, Section 10, clause 2 of the Constitution, the States are entirely powerless to protect domestic industry from foreign competition. In exercising its taxing power, for example, a State may not discriminate against goods brought in from another country, even though such goods have come to rest in the taxing State. *Welton* v. *State of Missouri*, 91 U. S. 275; *Robbins* v. *Shelby Taxing District*, 120 U. S. 489, 493–494; *Cook* v. *Pennsylvania*, 97 U. S. 566; *Phila. Steamship Co.* v. *Pennsylvania*, 122 U. S. 326, 341; *Crew Levick Co.* v. *Pennsylvania*, 245 U. S. 292. Under these decisions it seems clear that a state statute imposing a tax on the first domestic processing of coconut oil "wholly of Philippine production", or

even on foreign oils to the exclusion of similar oils produced by that State, would be invalid.

Unquestionably, if there is to be any protection to the people of this country from external competition, it must be afforded by the Federal Government. For Congress to offer that protection is entirely legitimate under the Constitution and cannot be said to be an attempt by Congress to act in a field reserved to the states by the Tenth Amendment. Moreover, the end being legitimate, Congress may exercise any of its powers in seeking its accomplishment.

None of the cases upon which petitioner relies hold to the contrary. Those statutes purporting to be taxes, which have been held unconstitutional under the Tenth Amendment, were statutes which operated, not as taxing statutes, but as laws regulating matters outside the field of Federal power. In the *Child Labor Tax Case,* 259 U. S. 20, and in *Hill* v. *Wallace,* 259 U. S. 44, Congress had prescribed courses of conduct with penalties for departures. In *United States* v. *Constantine,* 296 U. S. 287, a penalty was imposed upon the violation of state liquor laws. Liability to taxation depended upon scienter in the *Child Labor* case; upon membership in a board of trade complying with detailed regulations concerning grain futures in *Hill* v. *Wallace;* and upon violation of state law in the *Constantine* case. These provisions, which were all unrelated to the raising of revenue, caused this Court to con-

clude in each case, not that a tax had been levied with improper motives, but that the act did not levy a tax at all, and was a regulatory law directed to matters over which powers of regulation were not possessed.

We submit, therefore, that Section 602½ should be considered as an exercise of the taxing power, and that the motives which inspired Congress to pass the tax are immaterial. In any event, even if the motives of Congress be considered, they do not invalidate the tax.

II

THE ACT DOES NOT VIOLATE THE FIFTH AMENDMENT

The guarantee of due process in the Fifth Amendment, when applied to a Federal revenue act, requires only that the act be actually a taxing act and not be so arbitrary and unreasonable as to compel the conclusion that it does not involve an exercise of the taxing power at all. *Brushaber* v. *Union Pac. R. R.*, 240 U. S. 1, 24; *Billings* v. *United States*, 232 U. S. 261, 282; *McCray* v. *United States*, 195 U. S. 27, 61; *Magnano Co.* v. *Hamilton*, 292 U. S. 40, 44; *Nichols* v. *Coolidge*, 274 U. S. 531, 542; *Untermyer* v. *Anderson*, 276 U. S. 440; *Heiner* v. *Donnan*, 285 U. S. 312; *Helvering* v. *City Bank Co.*, 296 U. S. 85, 90.

As we have pointed out, the act at bar is a taxing act. There are no provisions in the statute that could be said to be so arbitrary and unreasonable as to class the statute as a confiscation of property.

The tax is not retroactive and the amount to be paid does not depend upon arbitrary considerations, but is dependent solely upon the extent to which the privilege taxed is exercised.

Petitioner argues, however, that the act is not a true taxing act and violates the Fifth Amendment because the proceeds are earmarked for payment to the Treasury of the Philippine Islands. We shall show later in this brief, pp. 35–58, that payment of this money to the Philippines is a valid use of Federal revenues. Nevertheless, we understand petitioner to argue that even though Congress might validly appropriate money from the general funds of the Treasury for this purpose, Congress may not earmark the proceeds of a particular tax for that purpose without violating the Fifth Amendment.

In discussing this argument, we wish at the outset to dispose of petitioner's objection to the form of the earmarking provisions. Petitioner asserts that under these provisions the money is to be paid directly to the Philippine Treasury without an appropriation as required by Article I, Section 9, Clause 7, of the Constitution. On the contrary, however, earmarking provisions like that being considered are not treated by Congress or the Treasury Department as permitting direct payment to the specified recipient. Actually, the money is deposited in a trust fund in the Treasury, from whence it is paid under regular appropriation acts of Congress. See the Permanent Ap-

propriation Repeal Act of June 26, 1934 (c. 756, 48 Stat. 1224), wherein Congress has specifically appropriated the money in a large number of such trust funds, including (Section 20) a continuing appropriation of the money in the Philippine special fund (internal revenue). Into this Philippine special fund are paid the proceeds of the internal revenue taxes which have since 1902 been levied in this country on goods imported from the Philippines and which are earmarked to be paid to the general fund of the Philippine Treasury. It would seem that this fund and the appropriations relating to it would cover the proceeds from the taxes here being considered.

Even if that were not the case, however, we submit that it is immaterial whether or not Congress has yet appropriated this money. A taxing act would not be invalid simply because the proceeds were not immediately appropriated. The absence of an appropriation "does not make void the demand for contribution, which may yet be appropriated by Congress, if that be necessary, by another statute." *Head Money Cases,* 112 U. S. 580, 599–600.

The contention of petitioner that the mere fact that a tax is earmarked for a particular purpose, even though that purpose is an entirely valid one for the application of public money from the Treasury, robs the tax of its character and converts it into confiscation forbidden by the Fifth Amendment, we believe to be entirely unsupportable.

Clearly, a tax is no less a revenue measure because imposed to raise revenue for a specific purpose. Since taxes are levied to provide funds intended to carry on governmental activities, it seems apparent that there is a natural and proper relation between specific anticipated governmental expenditures and the revenues to be raised by taxes.[11] Indeed, the Constitution itself specifies the uses for which taxes may be levied. Article I, Section 8, Clause 1. Some proponents of Governmental budgetary reform believe the connection should be made obligatory by law, as it is in some States of the United States. This Court has recognized that this relationship is a normal and necessary incident of the legislative function. *Knights* v. *Jackson,* 260 U. S. 12, 15; *Patton* v. *Brady,* 184 U. S. 608, 620. There can, we submit, be no objection if an act levying a tax also specifies the uses to which the proceeds are to be put, if that use is within the purposes permitted by the Constitution.

Taxes for some one particular purpose of government have been imposed for centuries, and that fact alone has never been thought to make the exaction something other than a tax. Such taxes were familiar English practice long prior to the adoption of our Constitution. From the earliest days it had been customary for Parliament to grant to

[11] See the Report of the Select Committee on the Budget of the House of Representatives (H. Rep. No. 14, 67th Cong., 1st Sess.) commenting on the importance of considering expenditures along with revenue.

the King specific additional taxes for the purpose of carrying on a war; "hereditary excises" for the purpose of defraying the expenses of the household; and additional taxes for the purpose of maintaining the civil lists. 6 Holdworth's History of the English Law, p. 253; 1 Blackstone, Commentaries, pp. 330, *et seq.* The English poor rate, the church rate, the sewer rate, the lighting and watching rates are similar examples. The fact that these special taxes defray a special expenditure of government does not render them any the less taxes. Seligman, Essays on Taxation (1895 ed.), pp. 345–349. And in this country all the States lay taxes for special purposes—taxes for roads, for schools, and the like. In fact, many state constitutions provide that no tax shall be laid unless its object is clearly specified. *E. g.,* New York Constitution, Article III, Sec. 24; Iowa Constitution, Article VII, Sec. 7; Michigan Constitution, Article X, Sec. 6. Nor is it any new departure for Congress, by the act levying the tax itself, to earmark or even appropriate the proceeds to a particular purpose.[12]

[12] Congress has often expressed in taxing acts the purpose of the tax, both by making actual appropriations in the act of the revenues to arise therefrom and by earmarking the revenues for a particular expenditure. Thus, actual appropriations were made by the Act of March 3, 1791, c. 15, 1 Stat. 199, 213–214, where a tax was levied on spirits and it was provided that the proceeds thereof were pledged and appropriated for the payment of interest on loans and the payment of the public debt; the Act of May 8, 1792, c. 32, 1 Stat. 267, 270, levying a tax on spirits and pledging and appropriating the proceeds to the purposes set forth in

Indeed, the earmarking provisions here are practically identical with those of the Foraker Act of April 12, 1900 (c. 191, 31 Stat. 77), which levied customs duties and internal revenue taxes in this country on Puerto Rican products, and provided that the proceeds should be paid to Puerto Rico. The Foraker Act was upheld in *Downes* v. *Bidwell*, 182 U. S. 244. In a like manner, money for the support of the Philippine government has been raised by internal revenue taxes and customs in this country, the proceeds being earmarked for the Philippine Treasury. Act of March 8, 1902, c. 140, 32 Stat. 54; Act of August 5, 1909, c. 6, 36 Stat. 11, 84–85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46

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the Act of March 3, 1791, and in the Act of May 2, 1792, *infra*; the Tariff Act of March 3, 1797, c. 10, 1 Stat. 503, appropriating the duties derived thereunder (1) to the payment of the Federal foreign debt and (2) to the payment of the debt owing to the Bank of the United States; the Tariff Act of May 13, 1800, c. 66, 2 Stat. 84, appropriating the proceeds to the discharge of interest and principal of the debts of the United States. And revenues were earmarked for particular expenditures in the Tariff Act of May 2, 1792, c. 27, 1 Stat. 259, 262, where it was provided that the surplus of the duties levied thereunder was to be applied to carry out a Federal act for the protection of the frontiers of the United States; the Act of March 26, 1804, c. 46, 2 Stat. 291; increasing all tariffs and providing that the proceeds from the increase go into a separate fund to be used for the sole purpose of carrying on a war against the Barbary powers; the Liquor Tax Act of December 21, 1814, c. 15, 3 Stat. 152, which authorized the Secretary of the Treasury to pledge the proceeds thereof in obtaining a

Stat. 590, Sec. 301. These statutes are precedents for, and, we believe, the decision in *Downes* v. *Bidwell* is authority for the validity of a tax levied in this country, the proceeds of which are earmarked for the Philippine Treasury.[13]

The fact, if it were a fact, that this particular taxpayer received no direct benefit from the expenditure of money for the purposes expressed in the act would be immaterial to the validity of the tax. It is not necessary that taxpayers receive a direct benefit from the use which is made by the Government of the revenues. It is sufficient if the proceeds are used for some proper governmental purpose. *Carley & Hamilton* v. *Snook,* 281 U. S. 66, 71–72; *Nashville, C. & St. L. Ry.* v. *Wallace,* 288 U. S. 249, 258. When so used, the money goes toward the promotion of a matter which has for its object the welfare of all (*Illinois C. R. Co.* v. *Decatur,* 147 U. S. 190, 198), and in this fact lies the justification for the levy. Thus, in the *Nashville* case, a railroad was required to pay a tax on the storage of the gasoline which ran its trains, al-

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loan on such a pledge; the Revenue Act of 1917, c. 159, 39 Stat. 1000, providing that the taxes collected under Title II and one-third of the taxes collected under Title III of that Act should constitute a separate fund for expenditures under certain acts providing for war preparedness; the tax on the sale of motor fuels sold in the District of Columbia, Act of April 23, 1924, c. 131, 43 Stat. 106, wherein it is specified that the proceeds were to be available only for road improvement and repair.

[13] Petitioner asserts that *Downes* v. *Bidwell,* supra, is not in point here, for the reason that the customs duties were

though the taxing act provided that the proceeds were to be used solely for the construction and maintenance of a highway system in the State. This use of the money not only did not benefit the railroad, but, on the contrary, directly injured it. The railroad contended that the specification of the use to be made of the tax proceeds made the exaction a fee rather than a tax, and since the railroad received no benefit from the use of the money, the exaction was unconstitutional. This Court, however, held that the exaction was constitutional as a true tax. Compare *Green* v. *Frazier*, 253 U. S. 233; *Jones* v. *City of Portland*, 245 U. S. 217; *Milheim* v. *Moffat Tunnel Dist.*, 262 U. S. 710, 719; *Olcott* v. *The Supervisors*, 16 Wall. 678, 695, 696; *Pine Grove* v. *Talcott*, 19 Wall. 666, 676, 678; *Wisconsin &c. R'd Co.* v. *Jacobson*, 179 U. S. 287; *Donovan* v. *Pennsylvania Co.*, 199 U. S. 279, 292, 293; *Magnano Co.* v. *Hamilton, supra.*

Moreover, in the present case it would be difficult to suggest a tax which could be levied in this country to secure revenue for the support of a government in the Philippines where the taxpayer would

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there considered by the Court to be an exercise of the power of Congress to legislate for the territories. The opinion of Mr. Justice Brown is clearly to the contrary, and indicates that he was of the opinion that the Foraker Act was an exercise of power of Congress to levy taxes, duties, etc., under Article I, Section 8 of the Constitution. (See 182 U. S. at p. 249. See also the concurring opinion of Mr. Justice White, 182 U. S. at p. 299, which indicates that he was of the same opinion.)

receive a more direct benefit from the use of the money than does the petitioner in this case. Were there no stable government maintained in the Philippines, it might well be impossible for the petitioner and other processors in this country of Philippine coconut oil to secure oil from that source. Petitioner alleges in its complaint that Philippine coconut oil is an essential ingredient of a large proportion of the soaps made and sold by it. (R. 3.) Production and exportation of this oil from the Philippines is made possible by the exercise on the part of Congress of its power of establishing and maintaining a government to promote law, order, trade and commerce in the Philippines. Petitioner and others who benefit from the existence of this government have little basis for complaining that some of the money to support it comes from taxes laid on the processing of oil from those Islands.

There is nothing in the decision of *United States* v. *Butler*, 297 U. S. 1, that indicates that Congress may not earmark its taxes for valid purposes. That decision held that it was unconstitutional to lay an exaction to raise money to be expended in a way forbidden by the Tenth Amendment. The vice in the statute considered in the *Butler* case was not that the money was earmarked, but that it was earmarked for use in an unconstitutional scheme of regulation. Nor do the cases of *Millard* v. *Roberts*, 202 U. S. 429, and *Twin City Bank* v. *Nebeker*, 167 U. S. 196, hold that the character of

a revenue act as a tax within the power of Congress is destroyed merely because the purpose to which the proceeds are to go is designated in the act. In those cases this Court held only that the laws in question did not have to comply with the constitutional requirement that all bills for the raising of revenue originate in the House of Representatives, because they were supportable as, and were intended to be, exercises of other powers vested in Congress.

We conclude that if, as we shall show, Congress has the power to appropriate public money to the Philippine Islands under the circumstances existing at the time of the passage of this act, the earmarking of the proceeds of this particular tax for that purpose does not destroy its revenue character and does not offend the Fifth Amendment.

III

THE VALIDITY OF THE TAX IS NOT AFFECTED BY THE PROVISIONS EARMARKING THE PROCEEDS OF THE TAX TO THE TREASURY OF THE PHILIPPINE ISLANDS

Petitioner, to demonstrate that the instant tax is invalid because of the provision for payment of the proceeds to the Philippine Islands, must prove each of two propositions to be true: (A) That it would be invalid to appropriate funds of the United States for the benefit of the Philippine Islands *and* (B) that the provision in Section 602½ (a) direct-

ing the payment of the proceeds of the tax on Philippine coconut oil to the Islands is inseparable from the tax. We submit that neither proposition can be supported.

A. Congress has full power to appropriate these funds for the support of the Philippine Islands

Petitioner contends that the provisions earmarking the proceeds of this tax for the general treasury of the Philippine Islands is bad for several reasons: (1) that it was merely an afterthought on the part of Congress in order to discharge a moral obligation to the Philippines, and bears no relation to the needs of the Islands or to the responsibilities of the United States (Br. pp. 47–59); or (2) that, in any event, the Philippine Islands have never been, and therefore are not now, a proper object for the expenditure of the funds of the United States (Br. pp. 1–39); or (3) that, in any event, after November 15, 1935, when the Commonwealth Government of the Philippines was established, the Islands became so far removed from the control of the United States that money could no longer be expended for their benefit (Br. pp. 47–59). We shall discuss these contentions in that order. Indeed, as we shall suggest below (*infra*, pp 56–58), even if it be assumed that the Philippines are a separate nation, nevertheless the appropriation of money to them would be wholly proper.

1. IF IT BE ASSUMED, ARGUENDO, THAT THE PROVISION DIRECTING PAYMENT TO THE ISLANDS WAS INSERTED FOR THE PURPOSE OF DISCHARGING A MORAL OBLIGATION, THE PAYMENT FOR SUCH A PURPOSE IS WITHIN THE POWER OF CONGRESS

The petitioner suggests that the purpose of Congress in inserting the provision for the payments to the Philippines was to recognize and discharge a moral obligation (Br. 72–75). This argument is based upon the fact that Section 6 of the Independence Act (c. 84, 48 Stat. 456) contains a provision that "After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law * * *" except that quotas are fixed for the importation into this country, without new or increased duties, of sugar and coconut oil. The petitioner also relies upon certain statements made by the Chairman of the Senate Committee on Finance in the course of the Senate debate on Section 602½ [14] and upon a letter from the President to the Chairman of the Senate Committee on Finance.[15]

Assuming that, as asserted by petitioner, the provision for payments to the Philippines was in recognition and discharge of a moral obligation, the provision is clearly constitutional, irrespective of the status of the Philippines. This Court has held that the Congress has the power to recognize

[14] Cong. Rec., Vol. 78, Part 6, p. 6311.
[15] *Id.*, p. 6317.

and authorize the payment of a moral obligation of the Government as a debt under Article I, Section 8, of the Constitution. *United States* v. *Realty Company*, 163 U. S. 427. The Court there said (at p. 440):

> What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term "debts" includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a "debt" to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon considerations of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. * * *

Certainly Congress is not limited to the payment of debts owed to citizens of the United States. Cf. *Russian Volunteer Fleet* v. *United States*, 282 U. S. 481. We submit, therefore, that irrespective

of the status of the Philippine Islands, the acceptance of petitioner's argument leads irresistibly to the conclusion that the payment here involved is valid.

2. PRIOR TO THE ESTABLISHMENT OF THE PRESENT COMMONWEALTH GOVERNMENT OF THE PHILIPPINES, THE UNITED STATES HAD FULL POWER TO APPROPRIATE MONEY FOR THE BENEFIT OF THE ISLANDS

By Article III of the Treaty of Paris (30 Stat. 1754) Spain ceded to the United States, without limitation or qualification, "the archipelago known as the Philippine Islands", and the United States, in turn, agreed to pay Spain $20,000,000. Upon the ratification of that treaty and the payment of the money (Act of March 2, 1899, c. 376, 30 Stat. 993), the Islands became a dependency and possession of the United States, over which the Federal Government had supreme and plenary power[16] *Posadas* v. *National City Bank*, 296 U. S. 497, 502; *Fourteen Diamond Rings* v. *United States*, 183 U. S. 176, 179; 34 Op. Atty. Gen. 287, 291.

Having thus acquired the Islands, Congress was, we submit, authorized by the Constitution to take whatever measures were necessary to promote their welfare and the welfare of the United States in relation to them. Further, Congress had the

[16] Certain islands geographically attached to the archipelago, but not included within the metes and bounds of Article III of the Treaty of Paris, were later purchased from Spain for $100,000. Supplemental Treaty proclaimed March 23, 1901, 31 Stat. 1942.

power to appropriate money to be used in carrying out these purposes. The power to appropriate is not simply a reasonable implication from, but is absolutely necessary to the exercise of the power of Congress over the territories of the United States specifically granted by Article IV, Section 3, Clause 2, of the Constitution. *Cf. American Ins. Co.* v. *Canter,* 1 Pet. 511, 542; *United States* v. *Kagama,* 118 U. S. 375, 380; *De Lima* v. *Bidwell,* 182 U. S. 1, 197, 199.

Indeed, so far as we have been able to discover, the contention has never before been advanced that the plenary authority of Congress over the territories under Article IV, Section 3, contains an implicit limitation which forbids Congress to appropriate money for their benefit. Such a construction of the clause is in direct conflict with the frequent expressions of this Court that, with respect to territories, the United States is sovereign, and is to be deemed equal in power with other sovereign nations. *Downes* v. *Bidwell,* 182 U. S. 244, 285; *Dorr* v. *United States,* 195 U. S. 138, 140. In *Downes* v. *Bidwell, supra,* the Court said (p. 285):

> If it be ever conceded that we are at liberty to acquire foreign territory, a presumption arises that our power with respect to such territories is the same power which other nations have been accustomed to exercise with respect to territories acquired by them. * * * The States could only delegate to Congress such powers as they themselves possessed, and as they had no power to ac-

> quire new territory they had none to delegate in that connection. The logical inference from this is, that if Congress had the power to acquire new territory, which is conceded, that power is not hampered by Constitutional provisions.

The power over territories is, in other words, plenary in the widest sense, and does not depend "upon the affirmative grants of the Constitution." *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936. Certainly it needs no argument to prove that the sovereignty of the United States over its territories is hopelessly incomplete if the funds for any purpose in any territory must be raised within that territory.

In point of fact, the contention is completely answered by the uniform practice of Congress in exercising its power of appropriation for the benefit of the territories. Since the beginning of the Government, appropriations have been made from the Treasury of the United States for the various territorial possessions, chiefly for the support of their governments, and, on occasion, for other purposes, such as internal improvements. This power of appropriation was first exercised with respect to the continental territories of the United States, including the District of Columbia.[17] With the acquisition of Alaska, similar appropriations of an

[17] In general, see, *e. g.*, Act of December 23, 1791, c. 3, 1 Stat. 226–227; Act of March 14, 1794, c. 6, 1 Stat. 342, 344; Act of May 7, 1800, c. 47, 2 Stat. 62, 65; Act of March 3, 1807, c. 25, 2 Stat. 431; Act of December 5, 1807, c. 2,

even more varied type were made for its support and benefit.[18] More recently, appropriations of every character have been made for the government and welfare of the various insular possessions. Excluding, for the moment, the Philippines, Congress has provided, in addition to huge sums for government expenses,[19] many contributions to the general funds of the territorial treasuries (see *infra*, pp. 46–47),[20] and has taken steps to reduce or eliminate, by use of the funds of the

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2 Stat. 450; Act of March 24, 1814, c. 28, 3 Stat. 106, 109; Act of April 27, 1816, c. 131, 3 Stat. 318; Act of February 12, 1828, c. 6, 4 Stat. 247, 252; Act of July 20, 1868, c. 176, 15 Stat. 92, 108–109. For early appropriations for the District of Columbia, see, *e. g.*, Act of February 27, 1801, c. 15, 2 Stat. 103, 106; Act of March 2, 1803, c. 29, 2 Stat. 235. See also, *e. g.*, Act of July 14, 1935, c. 241, 49 Stat. 341. For the Territory of Louisiana, see, *e. g.*, Act of March 19, 1804, c. 27, 2 Stat. 272; Act of March 26, 1804, c. 38, 2 Stat. 283, 285, 286, 289. For the Territory of Florida, see, *e. g.*, Act of March 3, 1819, c. 93, 3 Stat. 523; Act of February 28, 1824, c. 22, 4 Stat. 5. For the Territory of Arkansas, see, *e. g.*, Act of January 31, 1824, c. 17, 4 Stat. 5; Act of May 24, 1828, c. 100, 4 Stat. 303.

[18] See, *e. g.*, Act of July 27, 1868, c. 273, 15 Stat. 240; Act of July 7, 1884, c. 331, 23 Stat. 159, 179. For later appropriations, see *e. g.*, Act of May 14, 1930, c. 273, 46 Stat. 279, 321–323; *Annual Report of the Governor of Alaska* (1936), pp. 1, 9, 10, 26–27, 34, 42–44.

[19] See, *e. g.*, Act of March 3, 1901, c. 831, 31 Stat. 1010, 1018 (Hawaii); Act of April 28, 1902, c. 594, 32 Stat. 120, 148 (same); Act of May 14, 1930, c. 273, 46 Stat. 279, 323 (Same); Act of July 1, 1918, c. 114, 40 Stat. 704, 706 (Virgin Islands); Act of July 1, 1922, c. 259, 42 Stat. 786, 788 (Same).

[20] See, *e. g.*, Act of July 1, 1902, c. 1383, 32 Stat. 731 (Puerto Rico); Act of June 14, 1910, c. 290, 36 Stat. 467 (Same); Act of June 19, 1930, c. 546, 46 Stat. 789 (Hawaii); Act of June 19, 1936, c. 604, 49 Stat. 1535 (Same).

United States, the public debts of Hawaii and the Virgin Islands.[21] Public funds of the United States have been appropriated for extending the postal system to the territories,[22] for promoting the health of their people,[23] and for assisting in their education.[24] Large amounts have been expended in aid of agriculture, not only by experiment stations and extension service work,[25] but by direct aid to the farmers themselves.[26] Funds for roads,[27]

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[21] Act of March 3, 1901, c. 853, 31 Stat. 1133, 1152 (Hawaii); Act of February 17, 1933, c. 98, 47 Stat. 820, 855 (Virgin Islands); Act of June 22, 1936, c. 689, 49 Stat. 1597, 1623 (Hawaii).

[22] The Post Office Department does not supply separate figures on the expenses of the hundreds of post offices in Alaska, Hawaii, Puerto Rico, Guam, Samoa, and the Virgin Islands, but all are supported out of the general appropriations for the Department. See also minor special appropriations in Act of March 3, 1901, c. 831, 31 Stat. 1010, 1042; Act of October 28, 1919, c. 86, 41 Stat. 323.

[23] See, *e. g.*, Act of January 26, 1903, c. 332, 32 Stat. 750 (Hawaii); Act of May 28, 1924, c. 203, 43 Stat. 182, 184 (Guam).

[24] See, *e. g.*, Act of April 19, 1930, c. 201, 46 Stat. 229, 234 (Hawaii); Act of March 3, 1931, c. 404, 46 Stat. 1489 (Puerto Rico). See also 23 Op. Atty. Gen. 329.

[25] See, *e. g.*, Act of May 25, 1900, c. 555, 31 Stat. 191, 199 (Hawaii); Act of March 3, 1903, c. 1008, 32 Stat. 1147, 1164 (Hawaii and Puerto Rico); Act of May 26, 1910, c. 256, 36 Stat. 416, 438 (Guam); Act of December 5, 1924, c. 4, 43 Stat. 672, 682 (Same); Act of February 17, 1933, c. 98, 47 Stat. 820, 855 (Virgin Islands).

[26] See, *e. g.*, *Annual Report of the Governor of Porto Rico* (1931), pp. 10, 20.

[27] See, *e. g.*, Act of February 23, 1931, c. 283, 46 Stat. 1415 (Hawaii); Act of July 3, 1930, c. 846, 46 Stat. 860, 865 (Puerto Rico); Act of February 25, 1927, c. 202, 44 Stat. 1244 (Virgin Islands).

public buildings,[28] parks,[29] and forests [30] have been supplied by the United States. Large amounts have been appropriated for the amelioration of disasters.[31]

Nor has Congress treated the Philippine Islands as if they were governed by any different principle. It is true that the Islands have been able to support themselves in most respects, but this fact is material only with respect to the *need* for financial assistance from the United States, not with respect to the *power* of the United States to render it if necessary or desirable. Nor is it in any way material to the existence of this power that Congress has chosen to establish a form of local self-government in the Philippine Islands. Local autonomy, as in the Philippines and, to a lesser extent, in Puerto Rico and Hawaii, or direct administration by Congress as in the District of Columbia, is a matter of policy within the discretion of Congress

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[28] See Act of December 21, 1928, c. 46, 45 Stat. 1067 (Puerto Rico); Act of January 22, 1930, c. 23, 46 Stat. 57 (Same). See also *Annual Report of the Governor of Porto Rico* (1931), p. 86.

[29] See, *e. g.*, Act of January 24, 1923, c. 42, 42 Stat. 1174, 1213 (Hawaii). See also *Report of the Director of the National Park Service* (1932), p. 90.

[30] See, *e. g.*, Act of May 27, 1930, c. 341, 46 Stat. 392, 409 (Alaska and Puerto Rico).

[31] See, *e. g.*, Joint Resolution of December 21, 1928, c. 46, 45 Stat. 1067 (Puerto Rico); Act of March 4, 1929, c. 706, 45 Stat. 1607, 1609 (Same); Act of January 22, 1930, c. 23, 46 Stat. 57 (Same); Act of March 3, 1915, c. 83, 38 Stat. 928, 931 (Samoa); Act of March 4, 1931, c. 522, 46 Stat. 1552, 1577 (Same); Act of January 26, 1903, c. 332, 32 Stat. 780 (Hawaii).

(*Binns* v. *United States*, 194 U. S. 486, 491), and does not affect the *power* of Congress to legislate for a territory (*Asiatic Petroleum Co.* v. *Collector of Customs*, 297 U. S. 666, 670, 671), or to appropriate money for its proper maintenance.

But even with a general policy of having the Islands support themselves, Congress has spent large sums there. Large appropriations have, of course, been made for the government of the Islands,[32] which was at first wholly in the hands of the United States, and at its expense; and later progressively more in the hands of the Filipinos. Apart from those sums, Congress has made specific appropriations of funds for public works and public health,[33] for agriculture,[34] for education, [35] and for the postal service in the Islands.[36] From time

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[32] See, *e. g.*, Act of June 8, 1898, c. 395, 30 Stat. 437; Act of February 14, 1902, c. 17, 32 Stat. 5, 12; Act of March 3, 1903, c. 1007, 32 Stat. 1083, 1129.

[33] See, *e. g.*, Act of August 29, 1916, c. 416, 39 Stat. 545, 559. The United States Army constructed 13 water systems, which now furnish water to the towns where the systems are located. See *Annual Report of the Governor General* (1935), p. 11.

[34] The Department of Agriculture states that from 1898 through 1934, $80,692 of its funds were spent in the Philippine Islands for research in the study of hemp, maguey, corn, rice, and citrus plants. In addition, under the Sugar Quota Act, through January 31, 1937, rental and benefit payments have been made to sugar producers in the Islands totaling $15,359,534, with administrative expenses of $424,201, a total of $15,783,735. (Earlier figures are given in *Annual Report of the Governor General* (1935), pp. 41–49.)

[35] See, *e. g.*, Act of May 28, 1908, c. 214, 35 Stat. 430, 441.

[36] See, *e. g.*, Act of March 3, 1901, c. 851, 31 Stat. 1099; Act of March 3, 1901, c. 831, 31 Stat. 1010, 1042.

to time money has also been appropriated for a census,[37] for the care of lepers,[38] for aid to Filipino soldiers,[39] and for relief of disasters.[40] And by the Act of July 10, 1935 (c. 376, 49 Stat. 478), the United States offered to assist in the repatriation of native Filipinos by transporting any of them from any part of the United States to Manila.

The clearest authorities, however, in support of the validity of this tax, are a series of statutes which are almost identical with the present Act. In the Act of March 8, 1902 (c. 140, 32 Stat. 54), duties were laid on goods imported from the Philippines into the United States, and a tonnage tax was laid upon vessels transporting goods from these islands to the United States. By Section 4 it was provided that these taxes and duties "shall not be covered into the general fund of the Treasury of the United States, but shall be held as a separate fund and paid into the Treasury of the Philippine Islands, to be used and expended for

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[37] Act of July 1, 1902, c. 1369, 32 Stat. 691, 693. See also Act of March 3, 1903, c. 1006, 32 Stat. 1031, 1059, and Act of April 27, 1904, c. 1630, 33 Stat. 394, 415.

[38] See, *e. g.*, Act of August 29, 1916, c. 417, 39 Stat. 556, 559; Act of June 11, 1930, c. 463, 46 Stat. 556.

[39] See, *e. g.*, Act of May 28, 1930, c. 348, 46 Stat. 432, 446.

[40] Act of March 3, 1903, c. 1007, 32 Stat. 1083, 1129. The Act states "For the relief of the distress in the Philippine Islands; to be expended under the direction and in the discretion of the Philippine Government * * * three million dollars * * *."

the government and benefit of said islands."[41] See U. S. C., Title 19, Sec. 123 (a).

Similarly, by the Act of August 5, 1909 (c. 6, 36 Stat. 11, 84–85) duties were imposed upon products of the Philippines imported into the United States, and upon products of the United States imported into the Philippines, the proceeds of which were to be paid into the Insular treasury. By this Act also an internal-revenue tax was imposed upon articles from the Philippine Islands, to be paid by internal revenue stamps provided by the Commissioner of Internal Revenue, the tax to be equal to the tax paid upon like articles of domestic manufacture, and the proceeds of which were also to be paid to the Insular treasury. Similar statutes have been in force from then until the present time. See Act of October 3, 1913, c. 16, 38 Stat. 114, 193;

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[41] A similar act had been passed in April 12, 1900 (c. 191, 31 Stat. 77), with respect to Puerto Rico, earmarking the proceeds for the Puerto Rican Treasury. This act was before the Court in *Downes* v. *Bidwell*, 182 U. S. 244. The Act, which was attacked on the ground of lack of uniformity, was sustained. The point now in issue was not raised, but was apparently conceded by all the members of the Court. Mr. Chief Justice Fuller, speaking for the four dissenting members, stated (p. 355):

> Nobody disputes the power of Congress to lay and collect duties, geographically uniform, and apply the proceeds by a proper appropriation act to the relief of a particular territory, but the destination of the proceeds would not change the source of the power to lay and collect.

Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686 (U. S. C., Title 19, Sec. 1301).[42]

The internal revenue taxes imposed by these latter statutes are indistinguishable from the tax here involved. They are excise taxes upon the use of commodities in this country, paid in this country by citizens of the United States, and appropriated to the benefit of the Insular treasury. . .

We submit that the considered exercise by Congress of the power to appropriate such money for territories as it considered necessary or desirable is very persuasive evidence that the practice is a valid exercise of legislative authority. *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472, 473. The recent statement of the Court in *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936, is apt:

> A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined.

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[42] Large amounts have been collected under these acts and paid into the Philippine Treasury. Under the Act of March 8, 1902, collections had amounted to $3,834,513 by 1930. See United States-Philippine Tariff and Trade Relations (U. S. Tariff Comm., 1931), p. 121. Collections under the Act of 1909, and later similar acts, had amounted to $11,324,594 through 1929. *Ibid.* See also *Report of the Governor General of the Philippine Islands* (1932), p. 35.

Petitioner relies on *Downes* v. *Bidwell*, 182 U. S. 244. From the holding of that case, that the Philippine Islands are not a part of the United States within the meaning of that part of Article I, Section 8, Clause 1, which requires all duties, imports, and excises to be uniform "throughout the United States", petitioner concludes that, similarly, the Islands are not a part of the United States within the meaning of the preceding sentence in the same clause, which allows the United States to levy taxes "for the general welfare of the United States."

Although the Philippine Islands may not be a part of the United States in the sense that the uniformity clause applies to them, nevertheless it does not follow that the possession of territories or dependencies, and their proper government and administration are not for the general welfare of the United States. National possessions are, without question, matters of national rather than local concern. A contrary conclusion would render invalid an appropriation of money for the *purchase* of any possession or territory, for certainly it can be no less a local matter to *acquire* territorial possessions than to expend money for their government or well-being thereafter.

8. THE INSTITUTION OF THE COMMONWEALTH GOVERNMENT IN THE PHILIPPINE ISLANDS HAS NOT CHANGED THE POWER OF CONGRESS TO APPROPRIATE FUNDS TO THE INSULAR TREASURY

Petitioner's third contention is that even though an appropriation for the Philippines might have

been proper prior to November 15, 1935, since that time the Islands have acquired such a degree of autonomy that they should now be treated as a foreign country, and appropriations for their benefit should, therefore, be held invalid.

A brief statement of the various steps in the development of Philippine self-government will serve to clarify the issue. The original government of the Philippines was almost completely in the hands of the United States. As early as possible, however, local government was established. By the Organic Act of 1902 (c. 1369, 32 Stat. 691) a beginning was made, though large powers were reserved to the United States. By the Jones Act of 1916 (c. 416, 39 Stat. 545) the powers of the Filipinos were increased and those of the United States proportionately decreased.

On November 15, 1935, there was inaugurated a constitutional government in the Philippine Islands. This government was established under the Act of Congress of March 24, 1934 (c. 84, 48 Stat. 456; U. S. C., Title 48, Secs. 1231–1247). This Act, which provided for the ultimate grant of independence to the Philippines, was accepted by the Philippine legislature on May 1, 1934. House Document No. 400, 74th Cong., 2d Sess., p. 1. Pursuant to the Act, a Philippine Constitutional Convention was called, and on February 8, 1935, that Convention adopted a Constitution of the Philippines. *Id.*, pp. 5–24. On March 23, 1935, this Constitution was approved by the President of the United

States as substantially in conformity with the Act of March 24, 1934, and on May 14, 1935, the Constitution was approved and adopted by the people of the Philippines at an election. *Id.*, pp. 24, 30.

The Act of March 24, 1934, above referred to, and the Constitution, which expressly incorporates the provisions of that Act, both provide that final and complete withdrawal of the sovereignty of the United States over the Philippine Islands is not to occur for a period of ten years from the date of the inauguration of the constitutional government. During this ten-year period the Government of the Philippine Islands is to be known as the Government of the Commonwealth of the Philippines. By virtue of a proclamation of the President of the United States, this Government of the Commonwealth of the Philippines was inaugurated on November 15, 1935. *Id.*, p. 73.

We do not understand that petitioner claims that the Islands are, during the 10-year Commonwealth Government, a sovereign and independent state. Such a contention would be directly contrary to the express declaration of the Act of Congress authorizing the Constitution of the Commonwealth, and of the Constitution itself. Each of them provides that the United States is to retain sovereignty over the Islands during this period. Act of March 24, 1934 (c. 84, 48 Stat. 456, Secs. 2, 10; U. S. C., Title 48, Secs. 1231–1247). Philippine Constitution, Article XVII, Sec. 1, and Ordinance Appended to the Constitution.

The powers which are retained by the United States under the Act and Constitution demonstrate that the Philippine Islands are not a foreign nation. See Section 2 (a), 6, 7, and 10 (a) of the Act of March 24, 1934; and Section 1 of the Ordinance appended to the Constitution, *infra*, pp. 66–70, House Document No. 400, *supra*, p. 20. Without specifying them in detail, it will be sufficient to point out that during the Commonwealth period the United States is given full or partial power over trade relations, finances and currency, and foreign affairs. Every officer of the Philippine government must take an oath of allegiance to the United States. Decisions of the Supreme Court of the Philippines are reviewable by this Court, and those of the Auditor-General by the President. These provisions are incompatible with the existence of independent sovereignty in the Philippine Islands and indicate conclusively that the Philippines remain subject to the sovereignty of the United States during the ten year period. The grant of legislative power to a territory or possession does not deprive Congress of its power over it. *Asiatic Petroleum Co.* v. *Collector of Customs*, 297 U. S. 666, 671.[43]

[43] Sovereignty has always been taken to mean the absence of external control; *i. e.*, a nation is sovereign whose acts are not subject to the authority of and cannot be rendered void by the will of another. *Ware* v. *Hylton*, 3 Dall. 199, 224; Hall, *International Law* (7th ed.), p. 17; Moore, *International Law Digest* (1906), Vol. I, p. 18. See also *Rex* v. *Jacobus Christian*, South African L. R. (1924) App. Div. 101; Hague Court Reports (2d Ser., Scott), p. 93.

Not only is it clear from the Act and Constitution that the Philippines are still subject to the sovereignty of the United States, but also it is the declared view of the executive branch of the United States Government that during the ten year period the United States retains full rights of sovereignty and that the authority given the Philippines is that of self-government as to matters vested in them by Congress. See Note to the Minister of the Union of South Africa, dated November 15, 1935, *infra*, pp. 70–72." The question of whether the Philippines are still subject to the sovereignty of the United States is a political question, as to which the view of the executive branch of the Government is controlling. *Neely* v. *Henkel* (*No. 1*), 180 U. S. 109, 121; *Jones* v. *United States*, 137 U. S. 202; *Williams* v. *Suffolk Insurance Co.*, 13 Pet. 414; *Cherokee Nation* v. *Georgia*, 5 Pet. 1.

Petitioner is thus forced to the contention that although the Philippines are not sovereign—as petitioner says, in the "international law sense"—they have now achieved such a degree of independence that Congress no longer has the power to appropriate for their benefit. No authority is cited for this conclusion; indeed, the cases in this Court indi-

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"Cf. Public Statement of President Franklin D. Roosevelt, House Document No. 400, 74th Cong., 2d Sess., p. 24; Message of the Governor-General to the Philippine Legislature in its final session, *id.*, pp. 63–64; Address of the Honorable George H. Dern, Secretary of War, on behalf of President Roosevelt at the inauguration of the Government of the Commonwealth of the Philippines, *id.*, p. 70.

cate that the form of government in the Islands during the time that they are subject to the sovereignty of the United States is wholly irrelevant to the power of Congress to legislate for them. See p. 44, *supra*. *Asiatic Petroleum Co.* v. *Collector of Customs*, 297 U. S. 666, 671.

Petitioner, moreover, is ignoring completely the realities of the situation. There can be no doubt of the desire of the United States to grant complete independence to the Islands as soon as possible. Neither can there be doubt that Congress and the President believed that in granting independence they should take into account not only the political development of the Filipinos but also the ability of the Islands to achieve economic stability.[45] It is manifest from the Independence Act that Congress was greatly concerned with the financial stability of the Islands during the Commonwealth period. Chiefly due to this concern the ten-year preliminary period was provided, during which the Islands might progressively acquire political and economic independence.

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[45] See, for example, the President's message to Congress in connection with Philippine independence (Cong. Rec., Vol. 78, Part 6, p. 6383): "May I emphasize that while we desire to grant complete independence at the earliest proper moment, to effect this result without allowing sufficient time for necessary political and economic adjustments would be a definite injustice to the people of the Philippine Islands themselves, little short of a denial of independence itself." See also Hacker & Hendrick, *The United States Since 1865* (1936), p. 360 *et seq.*

But in order to achieve the ends which it sought, Congress imposed many specific limitations on the power and ability of the Insular government to raise revenue for its support, particularly during the first few years of the Commonwealth period. Export duties, which may not be levied for five years, are specified at certain amounts, and the proceeds must be expended solely for payment of bonded indebtedness (Act of March 24, 1934, Sec. 6). Import duties are to be collected in the United States upon the leading products of the Philippines in excess of certain quotas (*ibid.*). Acts affecting imports and exports cannot become law until approved by the President of the United States (*ibid.*, Sec. 2 (a) (9)). Property owned by the United States is exempt from all taxation (Sec. 2 (a) (4)). The public debt of the Islands is set at a definite amount by Congress, and, in any event, no loans may be contracted in foreign countries without the assent of the President (Sec. 2 (a) (6)). Other less important provisions might be mentioned. See Sec. 2 (a) (9), (12), and (14).

In addition to these provisions of the Independence Act, the effect of this tax itself also may well have influenced Congress to make this payment to the Insular treasury. The two principal export products of the Philippine Islands are sugar and coconut oil (including copra), in that order. United States-Philippine Trade (U. S. Tariff Commission, 1937), p. 44. In 1935, more land was devoted to coconut production than to the pro-

duction of any other commodity except rice. *Id.*, p. 65. Most of these exports go to the United States. In 1935, out of a total world export of coconut oil of $12,154,003, the United States received $12,004,053, and out of a total world export of copra of $10,987,330, the United States received $9,106,010. *Id.*, p. 47, Table 4. Under these circumstances, the imposition of the present tax, with its inevitable adverse effect upon the position of Philippine coconut oil in relation to competing oils in the United States not taxed, was bound to have a very disturbing effect in the Islands. *Id.*, pp. 154, 155.[46] The coconut industry, with all its lands, equipment, and employees, has, and will continue to be adversely affected, with consequent loss to the Insular government.

Certainly, we submit, Congress might well have felt that the disturbing effect of the limitations in the Independence Act, taken together with the present tax, warranted some relief to the Islands, which were best taken care of by the present appropriation. At the very least, it is not a wholly un-

[46] See Statement of the Department of Agriculture to the Chairman of the Senate Finance Committee (78 Cong. Rec., Pt. 6, pp. 6329, 6331):

> "Reference has just been made to the manner in which our commercial relations with the Philippines would be affected. So great is the importance of the coconut crushing industry (including oil-crushing) in Philippine economy and so great her dependence upon the United States as an outlet, that it can scarcely be doubted that a severe blow would be dealt to the Islands • • •.

reasonable conclusion. Viewed in the light of the plenary power of Congress over the territories (see pp. 39–41, *supra*), we submit that the decision of Congress should not now be overruled by this Court. Cf. *United States* v. *Butler*, 297 U. S. 1, 67.

4. EVEN ASSUMING THAT THE PHILIPPINE ISLANDS ARE A FOREIGN COUNTRY, NEVERTHELESS, THE APPROPRIATION WOULD BE VALID

As we have stated above (pp. 50–53, *supra*), the Philippine Islands are not, in any sense, a foreign country. However, even assuming, *arguendo*, that petitioner could demonstrate in some way that they should be treated as if they were wholly and completely foreign, nevertheless the appropriation here is valid.

In the field of foreign affairs the Federal Government possesses all the powers which are necessary to make the United States a sovereign nation. Cf. *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936. Among those powers must be the power to appropriate money for whatever purposes are deemed necessary or desirable. If Congress considers that the duties of the United States under international law require a payment to a foreign government,[47] or if it wishes

[47] See, *e. g.*, Moore, *International Law Digest* (1906), Vol. 6, pp. 809, 811, 885, 837; Treaty with Colombia proclaimed March 30, 1922, 42 Stat. 2122, 2124; Act of February 22, 1883, c. 51, 22 Stat. 421; Note to Norwegian Minister at Washington dated February 26, 1923, *Am. Journal of International Law*, Vol. 17, pp. 287–289; Senate Rept. No. 103, 64th Cong., 1st Sess.

to render assistance to a smaller state, in the interests of stable government,[48] or if any other reason of policy, open or secret,[49] compels Congress to the conclusion that money should be appropriated to a foreign country, directly or indirectly, the judgment of Congress should be conclusive on the necessity for the payment. Indeed, we submit that the matter of appropriation for international reasons should be deemed a political question into which the courts will not inquire. *Mountain Timber Co.* v. *Washington,* 243 U. S. 219, 234; *Terlinden* v. *Ames,* 184 U. S. 270, 288; *Luther* v. *Borden,* 7 How. 1.

B. In any event, the provision authorizing the appropriation to the Philippines of the proceeds of the tax is separable.

We believe that there can be no objection to the provision which earmarks the funds collected under

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[48] The United States has intervened in several countries, notably Nicaragua, Cuba and Santo Domingo, in the interests of economic and financial stability. See Stuart, *Latin America and the United States* (2d ed. 1929), pp. 266, *et seq.*; Foreign Relations of the United States (1905), p. 343. The United States also aided, with moral, naval, and indirect financial support, in the establishment of Liberia. See S. Doc. No. 60, 61st Cong., 2d Sess., p. 3; Foreign Relations of the United States (1912), pp. 667, *et seq.; id.* (1920), pp. 49–128. In the boundary dispute between Venezuela and Great Britain, Congress appropriated $100,000 to finance an investigation on the part of this country to ascertain the truth with regard to the dispute. Act of December 21, 1895, c. 1, 29 Stat. 1; Act of June 11, 1896, c. 420, 29 Stat. 413, 438.

[49] For example, to aid distressed populations in Europe. Act of March 30, 1920, c. 113, 41 Stat. 548, 549.

this act for payment to the Philippine Islands. However, even in the event that for some reason the provision for payment be held bad, nonetheless we believe the taxing provisions are separable and valid.

The Revenue Act of 1934, when introduced in the House (H. R. 7385, 73d Cong., 2d Sess.), as it was reported out by the Committee on Ways and Means, and as it passed the House contained the tax on coconut oil, but with no provision setting apart the funds for any particular purpose. In that form the bill was reported to the Senate by the Committee on Finance. The provision respecting payment was added on the floor of the Senate (Cong. Record, Vol. 78, Part 6, pp. 6308–6325, 6380–6389), and the House receded in conference.

The separability provision of the Revenue Act (Sec. 802, *infra*, p. 64) of course creates a presumption that the provisions are separable. *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 312. To overcome that presumption there must be considerations which establish "the clear probability that the invalid parts being eliminated, the legislature would not have been satisfied with what remains." *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 241; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184–185. Here, on the contrary, the evidence indicates that the provision for payment to the Philippines was entirely incidental. True, the provision may have been inserted because Congress believed that continuation of stable government on the Islands re-

quired financial assistance from Congress, or for other reasons, but *non constat* that this financial assistance could be rendered only in this fashion. Indeed, the proviso contained in Section 602½ (a), which would stop the payment to the Philippines upon the payment of subsidies to coconut growers, but would not stop the tax, indicates that Congress does not consider the tax and the appropriation inseparable. We submit, therefore, that if this incidental appropriation be held invalid, it should be held separable and the tax should stand. *Field* v. *Clark*, 143 U. S. 649; *National Life Ins. Co.* v. *United States*, 277 U. S. 508; *Head Money Cases*, 112 U. S. 580, 599.

United States v. *Butler*, 297 U. S. 1, is not authority to the contrary. There the tax commenced or ceased when the payments commenced or ceased. The sole object of the legislation was held to be the securing by benefit payments of restoration of purchasing power in violation of the Tenth Amendment. If the use of payments for that purpose was forbidden, it was clear that Congress would not have imposed the tax. Here, however, Congress desired the tax for purposes other than the raising of revenues for the Philippine Islands, as is illustrated by the fact that taxes were imposed upon other oils the proceeds of which were carried into the general revenues.

We submit, therefore, that irrespective of the validity of the provision in the Act directing that the funds collected from the processing of Philip-

pine coconut oil be held for the Treasury of the Philippine Islands, the tax on the processing of Philippine coconut oil itself is valid.

CONCLUSION

Wherefore, it is respectfully submitted that the decision below should be affirmed.

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MARCH 1937.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal[1] oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment

[1] So in original.

of this Act, or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Phillipine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "First domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury,

may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, combination, or mixture, upon the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is

imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States. (U. S. C. Title 26, Sec. 999.)

SEC. 802. SEPARABILITY CLAUSE.

If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Constitution of the Philippines, adopted by the Philippine Constitutional Convention at the City of Manila, Philippine Islands, February 8, 1935 (adopted by the People of the Philippines, May 14, 1935):

ARTICLE XVI. SPECIAL PROVISIONS EFFECTIVE UPON THE PROCLAMATION OF THE INDEPENDENCE OF THE PHILIPPINES.

SECTION 1. Upon the proclamation of the President of the United States recognizing the independence of the Philippines—

(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippines.

* * * * *

(3) The debts and liabilities of the Philippines, its provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippines; and where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any province, city, or municipality therein, the Government of the Philippines will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on all taxes collected.

(4) The Government of the Philippines will assume all continuing obligations of the United States under the Treaty of Peace

with Spain ceding the Philippine Islands to the United States.

(5) The Government of the Philippines will embody the foregoing provisions of this article (except subsection (2)) in a treaty with the United States.

ARTICLE XVII. THE COMMONWEALTH AND THE REPUBLIC.

SECTION 1. The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines.

ORDINANCE APPENDED TO THE CONSTITUTION

SECTION 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every officer of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippines recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approve the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

SEC. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a

Resident Commissioner of the Philippines to the United States who shall be appointed by the President of the Commonwealth of the Philippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications, compensation, and expenses of the Resident Commissioner shall be fixed by law.

SEC. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.

NOTE ADDRESSED TO THE MINISTER OF THE UNION OF SOUTH AFRICA DATED NOVEMBER 15, 1935

The Secretary of State presents his compliments to the Minister of the Union of South Africa and acknowledges the receipt of Mr. Close's note dated November 5, 1935, with which there was transmitted a copy of a letter from the South African Department of Customs and Excises in regard to the classification of the Philippine Islands for customs and statistical purposes.

The Secretary of State encloses a copy of an act (H. R. 8573, 73d Congress) entitled "To provide for the complete independence of the Philippine Islands, to provide for the

adoption of a constitution and a form of government for the Philippine Islands, and for other purposes", and approved March 24, 1934.

The Act provides *inter alia* for the formulation and drafting of a constitution for the government of the Commonwealth of the Philippine Islands, "which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898."

A copy of the Constitution of the Philippines, as adopted by the Philippine Constitutional Convention on February 8, 1935, and as certified by the President on March 23, 1935, is also enclosed. Article XVII of the Constitution provides:

"The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines."

The Commonwealth of the Philippines, referred to in the section above quoted of the Constitution, is to be inaugurated on November 15, 1935, and, as provided by Section 10 (a) of the Act above described, on the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government, "all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands", is to be withdrawn and

surrendered by proclamation of the President of the United States.

Until such action shall have been taken by the President, sovereignty over the Philippine Islands rests with the United States.

Enclosures:

Copy of H. R. 8573, 73d Congress.

Copy of the Constitution of the Philippines.

DEPARTMENT OF STATE,

Washington, November 15, 1935.

811B.01/261

U. S. GOVERNMENT PRINTING OFFICE: 1937

SUPREME COURT OF THE UNITED STATES.

Nos. 659, 687.—October Term, 1936.

The Cincinnati Soap Company, Petitioner, 659 *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.
Haskins Bros. & Co., Petitioner, 687 *vs.* George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[May 3, 1937.]

Mr. Justice Sutherland delivered the opinion of the Court.

Section 602½ of the Revenue Act of 1934, c. 277, 48 Stat. 680, 763, imposes a tax of 3 cents per pound upon the first domestic processing of coconut oil, and provides that all such taxes collected with respect to coconut oil wholly of Philippine production, etc., "shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."

Both petitioners are engaged in manufacturing soap and, at times stated in their petitions, used in its manufacture large quantities of coconut oil wholly the product of the Philippine Islands. In pursuance of § 602½, they made returns and paid the amount of the tax as required by that section. Subsequently, each of them filed with the Bureau of Internal Revenue a claim for the refund of the tax, on the ground that the imposition was not within the constitutional power of Congress. Both claims were denied, and petitions at law were filed in federal district courts to recover the sums paid. Demurrers were interposed attacking the sufficiency of the petitions, and these demurrers were sustained by the trial courts. Appeals were taken to the respective circuit courts of

appeal named in the title; and we granted writs of certiorari before a hearing or submission in those courts, because of the importance to the Philippine Islands of an early final decision of the question.

The validity of the tax is assailed by petitioners upon a variety of grounds, developed at length in their respective briefs and by the oral arguments at the bar. So far as we find it necessary to consider the various contentions, they may be stated in general terms as follows: that the tax is not imposed for any purpose contemplated by the taxing clause of § 8, Art. I, of the federal Constitution—that is to say, it is not imposed to pay the debts or provide for the common defense or general welfare of the United States; that, on the contrary, it is imposed for a purely local purpose, in violation of the Tenth Amendment; that the exaction violates the due process clause of the Fifth Amendment, because it is an arbitrary exaction from one group of persons for the exclusive benefit of another; that the act does not impose a true tax, but is a regulatory measure outside the field of federal power; that it violates clause 7, § 9, of Art. I of the Constitution, which provides that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law"; that the payment in bulk of the entire proceeds of the tax to the Philippines, with no direction as to the expenditure thereof, constitutes an unlawful delegation of legislative power. In dealing with these contentions, we find it convenient to do so without following the precise order in which they have just been stated. And certain of them are so interrelated that they may be joined for consideration in the same subdivision of the opinion which follows.

First. Plainly, the imposition of the tax in itself is a valid exercise of the taxing power of the federal government. It is purely an excise tax upon a manufacturing process for revenue purposes, and in no sense a regulation of the process itself. The Tenth Amendment is without application, since the powers of the several states over local affairs are not invaded or involved. This is disclosed upon the face of the act so clearly that discussion could not make it plainer. *United States* v. *Butler*, 297 U. S. 1, relied upon by petitioner, is not in point. There, we held that the sole aim of the statute, as shown by its terms, was to regulate a local situation, a matter wholly within the reserved powers of the states; and moreover that it amounted to a naked taking of the property of one

group of persons for bestowal upon another group. The *Child Labor Tax Case*, 259 U. S. 20, and other cases cited, bear still more remotely upon the contention. It is enough to say that the feature of the present case which differentiates it from all those cited is that the exaction here, both in form and substance, is a true tax, imposed, as we presently shall show, for a federal constitutional purpose. In that view the due process clause of the Fifth Amendment is not involved.

Second. Standing apart, therefore, the tax is unassailable. It is said to be bad because it is earmarked and devoted from its inception to a specific purpose. But if the tax, *qua* tax, be good, as we hold it is, and the purpose specified be one which would sustain a subsequent and separate appropriation made out of the general funds of the Treasury, neither is made invalid by being bound to the other in the same act of legislation. The only concern which we have in that aspect of the matter is to determine whether the purpose specified is one for which Congress can make an appropriation without violating the fundamental law. If Congress, for reasons deemed by it to be satisfactory, chose to adopt the quantum of receipts from this particular tax as the measure of the appropriation, we perceive no valid basis for challenging its power to do so.

We inquire first—Is the proposed *appropriation* to the Philippine Treasury for a constitutional purpose? since an affirmative answer to that question will establish the constitutional purpose of the *tax*. The pertinent taxing clause provides in general terms (Art. I, § 8, cl. 1) that taxes may be laid "to pay the Debts and provide for the common Defence and general Welfare of the United States." Primarily, and in a very high degree, whether a tax serves any of these purposes is a practical question addressed to the law-making department. And it will require a very plain case to warrant the courts in setting aside the conclusion of Congress in that regard. Compare *Nicol* v. *Ames*, 173 U. S. 509, 514-516. Nevertheless, such plain cases may exist; and the question is whether this is one of them.

The Philippine Islands and their inhabitants, from the beginning of our occupation, have borne a peculiar relation to the United States. The Islands constitute a dependency over which the United States, for more than a generation, has had and exercised supreme power of legislation and administration, *Posadas* v.

National City Bank, 296 U. S. 497, 502, a power limited only by the terms of the treaty of cession and those principles of the Constitution which by their nature are inherently inviolable. The possession of this well-nigh absolute power over a dependent people carries with it great obligations, as was pointed out by Mr. Root as Secretary of War in 1899. After referring to the practically unlimited power which we had over the Philippines, he said: "I assume, also, that the obligations correlative to this great power are of the highest character, and that it is our unquestioned duty to make the interests of the people over whom we assert sovereignty the first and controlling consideration in all legislation and administration which concerns them, and to give them, to the greatest possible extent, individual freedom, self-government in accordance with their capacity, just and equal laws, and opportunity for education, for profitable industry, and for development in civilization." Military and Colonial Policy of the United States, 161-162.

Among these correlative duties is the moral obligation to protect, defend, and provide for the general welfare of, the inhabitants. And such an obligation well may require the appropriation and expenditure of money from the national purse—in which case the obligation fairly comes within the term "debts" as used in the taxing clause. *United States* v. *Realty Co.*, 163 U. S. 427, 440-441. Congress, from the beginning of its existence, has accepted and legislated upon that view of the broad meaning of the term. In innumerable instances, it has made appropriations to relieve needs caused by earthquakes, fire, and other events, not only in localities within or possessed by the United States, but in foreign countries as well. Government counsel has furnished us an impressive list of appropriations of this character; and in addition has called attention to the many instances of appropriations for the support and welfare of the Indians, and for the uses of the territories. Legislation of this character has been so long continued and its validity so long unquestioned that, as we said in *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304, 322, 327-328, "A legislative practice such as we have here, evidenced not by only occasional instances, but marked by the movement of a steady stream for a century and a half of time, goes a long way in the direction of proving the presence of unassailable ground for the constitutionality of the practice, to be found in the origin and history of the power involved, or in its nature, or in both combined."

It may be that the tax and the appropriation of the proceeds therefrom in the present instance could be justified as an exercise of the taxing power to provide, in a broad sense, for the public defense or the general welfare of the United States. We do not pause to consider that view; for plainly, we think, the law may be sustained as an act in discharge of a high moral obligation, amounting to a "debt" within the meaning of the Constitution as it always has been practically construed. The justification for that conclusion has been so fully stated by this court in the case of *United States* v. *Realty Co., supra,* that further citation becomes unnecessary. "Under the provisions of the Constitution, (article 1, section 8)," we there said, "Congress has power to lay and collect taxes, etc., 'to pay the debts' of the United States. Having power to raise money for that purpose, it of course follows that it has power when the money is raised to appropriate it to the same object. What are the debts of the United States within the meaning of this constitutional provision? It is conceded and indeed it cannot be questioned that the debts are not limited to those which are evidenced by some written obligation or to those which are otherwise of a strictly legal character. The term 'debts' includes those debts or claims which rest upon a merely equitable or honorary obligation, and which would not be recoverable in a court of law if existing against an individual. The nation, speaking broadly, owes a 'debt' to an individual when his claim grows out of general principles of right and justice; when, in other words, it is based upon consideration of a moral or merely honorary nature, such as are binding on the conscience or the honor of an individual, although the debt could obtain no recognition in a court of law. The power of Congress extends at least as far as the recognition and payment of claims against the government which are thus founded. To no other branch of the government than Congress could any application be successfully made on the part of the owners of such claims or debts for the payment thereof. Their recognition depends solely upon Congress, and whether it will recognize claims thus founded must be left to the discretion of that body. Payments to individuals, not of right or of a merely legal claim, but payments in the nature of a gratuity, yet having some feature of moral obligation to support them, have been made by the government by virtue of acts of Congress, appropriating the public money, ever

since its foundation. Some of the acts were based upon considerations of pure charity. A long list of acts directing payments of the above general character is appended to the brief of one of the counsel for the defendants in error. The acts are referred to not for the purpose of asserting their validity in all cases, but as evidence of what has been the practice of Congress since the adoption of the Constitution. See, also, among other cases in this court, *Emerson* v. *Hall*, 13 Pet. 409; *United States* v. *Price*, 116 U. S. 43; *Williams* v. *Heard*, 140 U. S. 529. The last cited case arose under an act of Congress in relation to the Alabama claims."

Later decisions of this court have followed that view. *United States* v. *Cook*, 257 U. S. 523; *Marion & R. V. Ry. Co.* v. *United States*, 270 U. S. 280, 284. The determination of Congress to recognize the moral obligation of the nation to make an appropriation as a requirement of justice and honor, is obviously a matter of policy and discretion not open to judicial review unless in circumstances which here we are not able to find. *United States* v. *Realty Co.*, *supra*, p. 444.

It does not follow that because a federal tax levied for the express purpose of paying the debts or providing for the welfare of a state might be invalid (*The Passenger Cases*, 7 How. 283, 446) that such a tax for the uses of a territory or dependency would likewise be invalid. A state, except as the federal Constitution otherwise requires, is supreme and independent. It has its own government, with full powers of taxation and full power to appropriate the revenues derived therefrom. A dependency has no government but that of the United States, except in so far as the United States may permit. The national government may do for one of its dependencies whatever a state might do for itself or one of its political subdivisions, since over such a dependency the nation possesses the sovereign powers of the general government plus the powers of a local or a state government in all cases where legislation is possible. Compare *Stoutenburgh* v. *Hennick*, 129 U. S. 141, 147; *National Bank* v. *County of Yankton*, 101 U. S. 129, 133; *Mormon Church* v. *United States*, 136 U. S. 1, 42; *Utter* v. *Franklin*, 172 U. S. 416, 423. To say that the federal government, with such practically unlimited powers of legislation in respect of a dependency, is yet powerless to appropriate money for its needs, is to deny—what the foregoing considerations forbid us to deny—that the United States has, in that regard, the equivalent power of a state in comparable circumstances.

Third. In the exercise of its plenary powers, the United States began by governing the Philippine Islands under the war power. Following the Treaty of Paris, a condition of armed insurrection persisted for some time. In 1900, military government was succeeded by a species of executive government. The Spooner Amendment to the Army Appropriation Bill of March 2, 1901, c. 803, 31 Stat. 895, 910, provided that "All military, civil, and judicial powers necessary to govern the Philippine Islands . . . shall, until otherwise provided by Congress, be vested in such person and persons and shall be exercised in such manner as the President of the United States shall direct, for the establishment of civil government and for maintaining and protecting the inhabitants of said islands in the free enjoyment of their liberty, property, and religion".

This was followed, March 5, 1901, by a cable from the Secretary of War to the Philippine Commission containing the following laconic order, "Until further orders government will continue under existing instructions and orders." Report, Secretary of War, 1901, p. 54. The comprehensive Spooner Amendment, and these instructions and orders, virtually constituted for many months the charter of government for the Philippine Islands. In 1902, Congress provided for a complete system of civil government under the original Philippine Organic Act. By degrees, the active powers of the dependency have been enlarged, and those of the federal government decreased. But the authority which conferred additional power might at any time have withdrawn it. This brief résumé demonstrates both the completeness and flexibility of the national power over the Philippines, and the high character of the moral obligations which the possession of such power correlatively imposes. With the extension of power to the islands, our moral obligations may have grown less; but whether, or to what extent, this has been the case is a question for the determination of the political departments of the government.

But it is contended that the passage of the Philippine Independence Act of March 24, 1934, c. 84, 48 Stat. 456, and the adoption and approval of a constitution for the Commonwealth of the Philippine Islands have created a different situation; and that since then, whatever may have been the case before, the United States has been under no duty to make any financial contribution to the islands. Undoubtedly, these acts have brought about a profound

change in the status of the islands and in their relations to the United States; but the sovereignty of the United States has not been, and, for a long time, may not be, finally withdrawn. So far as the United States is concerned, the Philippine Islands are not yet foreign territory. By express provision of the Independence Act, we still retain powers with respect to our trade relations with the islands, with certain exceptions set forth particularly in the act. We retain powers with respect to their financial operations and their currency; and we continue to control their foreign relations. The power of review by this court over Philippine cases, as now provided by law, is not only continued, but is extended to all cases involving the Constitution of the Commonwealth of the Philippine Islands.

Thus, while the power of the United States has been modified, it has not been abolished. Moral responsibilities well may accompany the process of separation from this country; and, indeed, they may have been intensified by the new and perplexing problems which the Philippine people now will be called upon to meet as one of its results. The existence and character of the consequent obligations and the extent of the relief, if any, which should be afforded by the United States in respect of them, are matters, not for judicial but for Congressional consideration and determination.

It is not improbable that a failure to exercise control over imports from the Philippines would injuriously affect the industries of this country; and, on the other hand, an exercise of the power to tax imports might prove injurious to the people of the islands. Congress, in passing the legislation here under consideration, is not forbidden to balance these respective probabilities. The tax itself, it is said, was imposed for the purpose of protecting certain industries in this country; and it is challenged on that ground. That Congress has power to levy a tax with the collateral purpose of thereby protecting the industries of the United States is no longer open to doubt. *Hampton & Co.* v. *United States*, 276 U. S. 394, 411. But, in exercising the power here with that purpose, Congress may have concluded that it would thereby impose a hardship upon the Philippines which it was the moral duty of Congress to redress so far as possible. In that situation, we see no constitutional objection to a discharge of the duty by the appropriation of an amount equivalent to the tax in order to offset the anticipated burden. Certainly, this court cannot judicially declare that justice and fair dealing

in respect of a people, not yet completely independent of our authority, does not warrant such action.

Nor do we see any objection to the plan because the payment of the funds is subject to the condition that the Philippine Government shall not provide for any subsidy to be paid to the Philippine producers of coconut oil and the other products named in § 602½ of the act. It is perfectly plain that since Congress may levy the tax with the collateral purpose of protecting the industries of this country, it may in appropriating the proceeds put such restriction upon their use as will prevent the purpose from being nullified. This, we think, is the aim and the effect of the proviso.

Fourth. The contention that there has been no constitutional appropriation, or that any attempted appropriation is bad, because the particular uses to which the appropriated money are to be put have not been specified, is without merit. The provision of the Constitution (cl. 7, § 9, Art. I) that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law" was intended as a restriction upon the disbursing authority of the Executive department, and is without significance here. It means simply that no money can be paid out of the Treasury unless it has been appropriated by an act of Congress. *Reeside* v. *Walker*, 11 How. 272, 291; 2 Story on the Constitution (4th ed), §§ 1348, 1349; 1 Willoughby on the Constitution, § 63, p. 105. We deem it unnecessary to elaborate the point. The petitions for certiorari, filed in January of the present year, inform us that none of the proceeds of the tax in question has been transmitted to the Philippine Treasury. Evidently the moneys in the form of a trust fund, as the government asserts, are still in the Treasury of the United States. If Congress has not made an appropriation, it may still do so (*Head Money Cases*, 112 U. S. 580, 599-600); and, all other considerations aside, the interjection of the question into the present cases is premature.

The validity of the act disposing of the tax is also attacked as constituting an unlawful delegation of legislative power. That Congress has wide discretion in the matter of prescribing details of expenditures for which it appropriates must, of course, be plain. Appropriation and other acts of Congress are replete with instances of general appropriations of large amounts, to be allotted and expended as directed by designated government agencies. A striking

and pertinent example is afforded by the Act of June 17, 1902, c. 1093, 32 Stat. 388, where all moneys received from the sale and disposal of public lands in a large number of states and territories are set aside as a special fund to be expended for the reclamation of arid and semi-arid lands within those states and territories. The expenditures are to be made under the direction of the Secretary of the Interior upon such projects as he may determine to be practicable and advisable. The constitutionality of this delegation of authority has never been seriously questioned. See *United States* v. *Hanson,* 167 Fed. 881, 884-885. In the present case, the disposition of the proceeds of the tax finds precedent in many previous acts of Congress providing for payments into the Philippine Treasury.*

But all this aside, the important point is that Congress was here dealing with a dependency for which it had provided a complete system of government to administer the affairs of a population for whose welfare the United States was under a high degree of moral responsibility, as we already have seen. The proceeds of the tax under consideration are to be paid into the treasury of a government which Congress itself thus created, to be expended by that government, except as the act otherwise directs, in accordance with its judgment as to specific necessities. The congressional power of delegation to such a local government is and must be as comprehensive as the needs. Compare *United States* v. *Heinszen & Co.,* 206 U. S. 370, 384-385. In dealing with the territories, possessions and dependencies of the United States, this nation has all the powers of other sovereign nations, and Congress in legislating is not subject to the same restrictions which are imposed in respect of laws for the United States considered as a political body of states in union. *Dorr* v. *United States,* 195 U. S. 138, 140, 142.

Congress has power to create a local legislature for the Philippines; and it has done so. Congress has power to authorize the legislature to impose taxes for all the lawful needs of the islands, and to appropriate the proceeds for such uses and in such amounts as the legislature may determine (compare *Leitensdorfer* v. *Webb,* 20 How. 176, 182); and this it has done. Congress has power to

*Act of March 8, 1902, c. 140, 32 Stat. 54; Act of August 5, 1909, c. 6, 36 Stat. 11, 84-85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686.

appropriate the moneys here in question, and cause them to be paid from the national treasury into the Treasury of the Philippine Islands; and for this it has provided. It would result in a strange anomaly now to hold that Congress had power to devolve upon the Philippine Government the authority to appropriate revenue derived from local taxation as the government saw fit, but that Congress was without power to confer similar authority in respect of moneys which lawfully will come into the Philippine Treasury from the Treasury of the United States or from other sources apart from taxation. It is true, as already appears, that the uses to which the money is to be put are not specified. But in all instances where funds shall come into the Philippine Treasury, we may indulge the presumption, in favor of a responsible and duly-constituted legislative body, that the funds will be appropriated for public purposes and not for private uses.

Whether the payment to the Philippines of the large sums of money which will flow from this tax is unwarranted in fact; whether the present or prospective needs of the islands require it; and other queries directly or indirectly challenging the wisdom or necessity of the Congressional action, are all matters, as we repeatedly have pointed out, with which the courts have nothing to do. We find the legislation to be free from constitutional infirmity; and there both our power and responsibility end.

Judgments affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

152033

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1936

No. 687

HASKINS BROS. & CO., PETITIONER,

vs.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JANUARY 29, 1937.

CERTIORARI GRANTED FEBRUARY 15, 1937.

SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 17, 1937.

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[fol. 1] [Caption omitted]

IN UNITED STATES DISTRICT COURT, DISTRICT OF NEBRASKA, OMAHA DIVISION

Law No. 3615

HASKINS BROS. & CO., a Corporation, Plaintiff,

vs.

GEORGE W. O'MALLEY, Individually and as Collector of Internal Revenue for the District of Nebraska, Defendant.

PETITION—FILED November 12, 1936

The petition of Haskins Bros. & Co. respectfully Shows:

1. That the petitioner Haskins Bros. & Co., is a corporation organized and existing under and by virtue of the laws of the State of Iowa, and is qualified to do business in Nebraska and maintains its principal office and place of business in the city of Omaha, in the County of Douglas, State of Nebraska, at 115 Hickory Street, the same being in the District of Nebraska, Omaha Division.

2. The defendant George W. O'Malley is the Collector of Internal Revenue for the District of Nebraska, is a citizen of the State of Nebraska, resides in the city of Omaha, Nebraska, in the Omaha Division of the United States District Court for the District of Nebraska, and maintains his principal office as said Collector of Internal Revenue at Omaha, Nebraska. As such Collector of Internal Revenue the said defendant is required by law to collect all taxes, with inter-
[fol. 2] est thereon, and fines and penalties relating thereto, which are provided for by the statutes of the United States of America and due from residents and taxpayers of the said Internal Revenue District of Nebraska, and to compel and enforce payment of such taxes, interest, fines and penalties so provided by statute as the collecting agent, administrative officer, and fiscal representative of the United States of America.

3. That this suit is brought against the defendant under the laws of the United States and is for the recovery of a sum of money called a processing tax imposed by Sec. 602½

of the Revenue Act of 1934 (Act of May 10, 1934, c. 277, 48 Stat. 763) upon the processing by plaintiff of coconut oil, which sum of money is hereby alleged to have been illegally collected from the plaintiff by the Collector of Internal Revenue at Omaha, Nebraska, a copy of the relevant sub-sections (a), (b) and (f) of said Sec. 602½ is, for convenience, attached to this petition, marked Exhibit 1.

The jurisdiction of this Court is based upon USCA Title 28, Sec. 41, Subdivision 5, this being a case arising under a law providing for internal revenue and upon USCA Title 28, Sec. 41 Subdivision 1, this being a suit of a civil nature at common law arising under the Constitution and laws of the United States and the matter in controversy herein exceeding, exclusive of interest and costs, the sum or value of $3,000.00.

4. That the claim of petition is for a refund of the sum of $26,843.02 collected from it by the Collector of Internal Revenue at Omaha, Nebraska. As required by said Sec. 602½ of the Revenue Act of 1934, plaintiff filed the return with said Collector on the form prescribed by the Commissioner of Internal Revenue and approved by the Secretary of the Treasury, stating that in the months of June, July, August, September and October, 1935, it had used in the manufacture of soap intended for sale 894,767-1/3 pounds of coconut oil in said months, which coconut oil was wholly the production of the Philippine Islands, and together with said return plaintiff did pay said sum of $26,843.02 to the said Collector of Internal Revenue, which sum was 3c per pound upon said Philippine coconut oil as prescribed by said Sec. 602½ of the said Revenue Act of 1934. For abbreviation the expression "Philippine coconut oil" as used in this bill of complaint will signify coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or Philippine production; said payment of said sum of $26,843.02 was [fol. 3] made by petitioner to the said Collector at Omaha, Nebraska, on July 31, August 31, September 30, October 31, November 30, all in 1935.

On January 13, 1936, plaintiff filed with the Bureau of Internal Revenue of the United States its claim for the refund of the said sum of $26,843.02, a true copy of said claim being attached to this bill of complaint, marked Exhibit 2, and is hereby incorporated herein by reference,

which claim was rejected and denied by the Commissioner of Internal Revenue of the United States on the 5th day of February, 1936, a true copy of said rejection and denial being attached hereto, marked Exhibit 3, and hereby incorporated by reference.

5. The plaintiff is now, was at the time of said payment, and for many years previous thereto, in the business of manufacturing soaps and allied products with its manufacturing plant located exclusively at Omaha, Nebraska, and the manufacture of soap and allied products by plaintiff, including the use of Philippine coconut oil in such manufacture, took place at said manufacturing plant and was and is exclusively intrastate in character and exclusively within the State of Nebraska. In the months of June, July, August, September and October, 1935, as well as before and since said months, Philippine coconut oil was and has been an essential and indispensable ingredient of a large proportion of the soaps made and sold by the plaintiff and in these said months, as well as before and since, plaintiff was and has been unable to make use of any substitute for such coconut oil in the manufacture of said large proportion of soaps upon which its business was built and conducted and was and has been dependent. Coconut oil contains lauric acid which is the element causing soap to lather freely. There is no commercially important growth and production of materials containing lauric acid within the boundaries of the continental United States.

6. Philippine coconut oil, either in liquid form or in the solid form of copra when intended for use in the United States, is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded from said ships and delivered to said dealers at said ports and when delivered the importation of said oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers, including the plaintiff herein, said dealers place the oil from time to time in railroad tank cars in which it is transported by rail from the plants or warehouses of the dealers to the plants or warehouses of the coal manufacturers or other users of said Philippine coconut oil. These manufacturers and other users un-

[fol. 4] load these tank cars delivered to them respectively and place the oil in their own storage tanks and other receptacles in their own respective plants and thereupon the interstate transportation of the oil terminates.

All of the above facts concerning the importation and transportation of said Philippine coconut oil apply to and were true of the coconut oil used by the plaintiff in the months of June, July, August, September, and October, 1935, and the use by plaintiff of the said 894,767-1/3 pounds of Philippine coconut oil during said months in the manufacture of soaps and allied products intended for sale constituted the first domestic processing under the terms of said Sec. 602½ of the Revenue Act of 1934 upon which use the exaction in the guise of a tax in said sum of $26,843.02 was imposed as well as of all other Philippine coconut oil used by the plantiff in its manufacture of soap and allied products. All of the said Philippine coconut oil was received by the plaintiff in tank railroad cars into which it had been placed by the dealers from whom plaintiff purchased said Philippine coconut oil and had been delivered to plaintiff in said tank cars at its aforesaid soap manufacturing plant at Omaha, Nebraska, where said oil was unloaded from the tank cars and placed in storage tanks located in said manufacturing plant at Omaha, Nebraska, from which storage tanks it was drawn by plaintiff from time to time for use in the process of manufacturing soap and allied products. The commerce or transportation of the oil which was sold and shipped by the dealers by rail to the plaintiff terminated upon the arrival at the plaintiff's Omaha plant of the tank cars containing said oil, and use of the oil in the manufacture of soap did not and could not commence until after the complete termination of both the foreign commerce and transportation from the Philippines to the dealer and the commerce and transportation from the dealer to the plaintiff, none of said oil whatsoever was imported by plaintiff from the Philippines or purchased by the plaintiff from any grower thereof or dealer therein located in the Philippine Islands.

There is some Philippine coconut oil imported into the United States and used therein without a domestic processing which would subject it to the exaction in the guise of taxes provided for by Sec. 602½ of the Revenue Act of 1934.

7. It was in June, July, August, September and October, 1935, and before and after those months, that plaintiff was and is now unable to recover the amounts imposed upon it [fol. 5] by the provisions of said Section 602½ relating to the processing of Philippine coconut oil by increasing prices at which it sold or sells its soaps. Such products were sold and are salable only in highly competitive markets; and the selling prices thereof were not and are not and could not and cannot be controlled by the petitioner, but were and are in fact controlled by competitive conditions in the industry. If petitioner undertook to increase the prices of its soaps to the extent represented by the amount of such processing taxes, it would have been and would be unable to dispose of such products at such increased prices because of market and competitive conditions in the soap industry over which petitioner had and has no control. The three cents per pound imposed by said Section 602½ constituted about thirty (30%) percent of the total manufacturing cost of petitioner's coconut oil soaps. The conditions of and situation in the soap industry and trade were at the time of the enactment of said Sec. 602½ and have since been such that the addition to its production costs imposed by said section upon Philippine coconut oil made and has continued to make it impossible for petitioner to conduct its business at a profit and subjected petitioner's business to an operating loss. Previous to the effectiveness of said Section 602½ petitioner had been able to conduct its business at a substantial profit, but since the effectiveness of said section it has suffered a substantial operating loss, notwithstanding that its business has been prudently, economically and efficiently managed and conducted; and this loss results from the provisions of said Section 602½ imposing upon the first domestic processing of Philippine coconut oil " a tax of 3 cents per pound to be paid by the processor."

8. Petitioner further states that the Philippine Independence Act (Act of March 24, 1934, 48 U. S. C. A., #1231 to 1247) has been in full force and effect from and after May 1, 1934, and has been in full force and effect since the enactment of said Section 602½ of the Revenue Act of 1934 and is now in full force and effect.

The constitution for the government of the Commonweath of the Philippine Islands has been formulated and

drafted; has been submitted to the President of the United States; has been certified by the President to conform substantially with the provisions of the Philippine Independence Act (Act of March 24, 1934, 48 U. S. C. A. Sections #1231 and 1247); has been submitted to the people of the Philippine Island at an election; has been ratified at said election by a majority of the votes cast; and election has been held to select officers of the government of the Com- [fol. 6] monwealth of the Philippine Islands provided for in said constitution of that Commonwealth; a Proclamation has been issued by the President of the United States announcing the results of the election; the new government of the Philippine Islands has been inaugurated and taken office, and has entered upon its rights, privileges, powers, and duties as provided by the said constitution of the Commonwealth of the Philippine Islands and by the said Philippine Independence Act.

That petitioner has been informed and believes, and, therefore avers the fact to be that the Philippine Islands are no longer an insular possession of the United States but are now a separate nation and commonwealth, with its own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States.

The Philippine Government has not provided by any law for any subsidy to be paid to the producers of copra, coconut oil or allied products.

9. As required by the said Sec. 602½ of the Revenue Act of 1934, the said sum of $26,843.02, and all the other sums paid by plaintiff upon the processing of Philippine coconut oil since said Sec. 602½ took effect and all sums similarly paid by other soap manufacturers and other processors of Philippine coconut oil have been placed in a separate fund held exclusively for the benefit of and to be paid over in its entirety to the treasury of the Philippine Islands. No part of said fund which is now in excess of the sum of Thirty Million Dollars ($30,000,000.00) has ever been paid over to date to the treasury of the Philippine Islands.

10. Petitioner further alleges that the object and purpose of Congress in imposing upon the processing of Philippine coconut oil the so-called taxes mentioned in said Sec. 602½ of the Revenue Act of 1934 was not to raise revenues

with which to pay the debts or provide for the common defense or general welfare of the United States or for the support of or operation of the Government of the United States, but that said object and purpose of said section, as appears on the face thereof as well as from the proceedings in Congress while said section was pending, was to regulate the volume of production and the selling prices of certain vegetable oils and fats produced within the United States by compelling soap manufacturers and other manufacturers using coconut oil to substitute said domestic vegetable oils in place of coconut oil in the manufacture of their soaps. [fol. 7] The said Sec. 602½ is a statutory plan to regulate intrastate production and manufacture.

11. All of the provisions of said Sec. 602½ relating to Philippine coconut oil, namely the so-called processing tax, the holding of the proceeds thereof as a separate fund, the payment of such separate fund to the Treasury of the Philippine Islands and the cessation of such payment after the Philippine Government provides by law for a subsidy to producers of copra and coconut oil, are interrelated, intertwined, interdependent and integrated parts of one legislative plan and of one scheme of legislation and are therefore inseparable.

12. The oils referred to in Sec. 602½ of the Revenue Act of 1934, and more especially coconut oil, are not produced in any substantial quantity within the United States but [complee] for use in food products such as salad oil, margarin and confection, and in soaps, with oils and fats, such as cottonseed oil, grease and tallow, which are produced domestically by the farmers and dairy interests of the United States, and the purpose of the Congress in imposing the exactions in the guise of taxes mentioned in said Sec. 602½ was not to raise revenue, but to further the general plan of regulation of agriculture and manufacturing incorporated in the Act of May 12, 1933, c. 25, 48 Stat. 31, known as the "Agricultural Adjustment Act of 1933", which has been declared unconstitutional by the Supreme Court of the United States. The purpose of said exactions in the guise of taxes is solely to increase the cost of said oils, and particularly coconut oil, to a point which will permit a corresponding increase in the prices of oils and fats produced domestically and by the farmers and dairy interests of the United States, and further to reduce the consumption of said oils men-

tioned in Sec. 602½, and particularly coconut oil, and thereby regulate the production and increase the price of domestic fats and oils and force their consumption as a substitute for coconut oil upon the plaintiff, and other first domestic processors of said oil, and at the same time to create a further use of such illegal and unauthorized exactions in the guise of taxes to be paid to the Treasury of the Philippine Islands to compensate it for the breach of the agreement of the Government of the United States to permit the entry of 200,000 long tons of Philippine coconut oil per year into the United States free from the imposition of duties or other restrictions to reduce importation or increase the price thereof for a period of years after the [unauguration] of the Government of the Philippine Islands [fol. 8] under and by virtue of the said Philippine Independence Act.

13. Plaintiff is advised by counsel, believes and therefore avers, that the said exactions in the guise of Federal excise taxes upon the first domestic processing of Philippine coconut oil are unconstitutional and void for the following reasons:

1. The imposition of said taxes upon this taxpayer was by virtue of an unconstitutional and void statute being Sec. 602½ of the Revenue Act of 1934, in that said statute was a scheme to regulate the production of domestic fats and oils, and the money thus raised is, by said statute, required to be held in a separate fund in the Treasury, and is attempted to be appropriated in advance to be paid to the Treasury of the Philippine Islands, and does not go to the general support of the Government of the United States. The taxpayer therefore has standing to challenge the legality of the exaction of such tax from it.

2. The exaction from this taxpayer and other processors of Philippine coconut oil of said payments provided for by Sec. 602½ of the Revenue Act of 1934 was by an unconstitutional and void statute, in that it provided for an expropriation of money from one group, i. e., the first domestic processors in the United States of Philippine cononut oil, for the benefit of another group, i. e., the people of the Philippine Islands, and the said exaction was not imposed to effect regulation of a matter in which both groups are interested

and in respect of which there is a power of legislative regulation.

3. The said tax attempted to be imposed by Sec. 602½ (a) of the Revenue Act of 1934 upon said Philippine coconut oil first domestically processed by the taxpayer, and the integral and inseparable provision found in said sub-section (a) that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands is not within the delegated powers granted by the Constitution to the Congress of the United States, and said statute is therefore unconstitutional and void in its entirety.

4. The imposition of said tax upon plaintiff and others similarly situated holding the same in a separate fund, and requiring the same to be paid over to the Treasury of the Philippine Islands, do not come within the taxing power of Congress under Article 1, Section 8, Clause 1 of the Constitution of the United States.

[fol. 9] The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1 of the Constitution to levy and collect taxes, duties, imposts and excises, in that they were not imposed to pay the debts or provide for the common defense or the general welfare of the United States but were imposed for the benefit of the Philippine Islands, which are not a part of the United States within the meaning of this clause, and the said taxes are not being levied to pay the debts nor to provide for the common defense and general welfare of the United States.

5. The attempt by Congress to impose the tax provided for in Sec. 602½(a) of the Revenue Act of 1934 as a means to the end of regulating production in the several states was an attempt to exercise a power not expressly granted to the Federal Government and not impliedly necessary for the exercise of any granted power, specifically the interstate commerce power, but is reserved to the States under the 10th Amendment, which is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively or to the people."

6. Sec. 602½ (a) is entirely unconstitutional and void for the reason that the attempted exercise by the Congress of

the United States of its power to tax and spend was not for a truly national purpose, nor for the general welfare of the United States, but was for the exclusive benefit of the people of the Philippine Islands, and the power to tax having been exercised for an unauthorized and illegal purpose inseparably connected with the tax, the tax itself is unauthorized and void.

7. The Congress of the United States, in imposing the tax upon plaintiff and others similarly situated, provided for in Sec. 602½ (a) of the Revenue Act of 1934, and in providing that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands, has violated Article 1, Section 9, Clause 7 of the Constitution of the United States, which is as follows:

"No money shall be drawn from the treasury but in consequence of appropriations made by law; • • •"

there having been no valid nor sufficient appropriation made by law as to the said taxes upon Philippine Islands' coconut oil to authorize the same being paid over to the Treasury of the Philippine Islands.

[fol. 10] 8. The said tax imposed by Sec. 602½(a) of the Revenue Act of 1934 upon Philippine coconut oil first domestically processed by plaintiff, and others similarly situated, and the provision of said Act that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands, is in violation of the 5th Amendment to the Constitution of the United States, which provides in part:

"No person shall be • • • deprived of life, liberty or property, without due process of law • • •",

in that one group of citizens of the United States, being the plaintiff and others similarly situated, are deprived of their property, and the valuable property rights of carrying on their business unmolested by prohibitory taxation, which said taxes are not for general revenue for public purposes, but are taxes levied on one group of persons, i. e., processors of Philippine coconut oil, being the plaintiff and others similarly situated, for the exclusive benefit of another group of persons, i. e., the Government of the Philippine Islands.

9. The said taxes if construed as direct taxes violate Article 1, Section 9, Clause 4 and Article 1, Section 2, Clause 3 of the Constitution, because they are not apportioned according to population.

10. The said alleged taxes cannot be levied under Article 1, Section 8, Clause 3 of the Constitution, regulating commerce, because the processing of coconut oil done by plaintiff is exclusively in intrastate commerce and cannot be regulated by Congress.

11. The imposition of said tax by said statute is arbitrary, capricious and therefore void because it is not a true tax, but a subterfuge to evade the requirement of the Philippine Independence Act (Act of March 24, 1934; 48 U. S. C. A. #1231 to 1247) which was in full force and effect from and after January 17, 1933, and at the present time, and which provides that two hundred thousand long tons of Philippine coconut oil may be imported from the Philippines each year into the United States free of duty, and said tax was attempted to be levied by Congress as an integral and inseparable part of a scheme to regulate and control the wholly intrastate manufacturing business of the taxpayer by forcing it to use much less coconut oil, and as substitutes therefor oils and fats produced domestically by the farmers and dairy interests of the United States, and by said tax the Congress attempt to arbitrarily and unreasonably exercise a power over domestic production and use of oils and fats not expressly granted nor delegated to it by the Constitution of the United States, nor reasonably to [fol. 11] be implied therefrom, and the said tax is therefore in violation of the Tenth Amendment, and unconstitutional and void.

12. Sec. 602½(a) of the Revenue Act of 1934 is unconstitutional and void for the further reason that it provides for a tax of 3¢ a lb. on palm oil which may be used by this taxpayer in the manufacture of soap, but excludes from the said tax palm oil used in the manufacture of tin plate, which is arbitrary, capricious, unreasonable and discriminating and results in a lack of uniformity between the first domestic processing of palm oil by this taxpayer and all other processors except those using the same in the manufacture of tin plate, and hence is in violation of Article 1, Section 8, Clause 1 of the Constitution.

13. Said taxes so imposed on the taxpayer by 602½(a) of the Revenue Act of 1934 are unconstitutional and void for the further reason that the taxes paid are still held in a separate fund in the Treasury of the United States earmarked for the Treasury of the Philippine Islands, but the Philippine Islands are not a part of the United States, and are no longer an insular possession of the United States, but are now, and since November 15, 1935, have been a separate nation and commonwealth, with their own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States, wherefore it is unauthorized, illegal and improper to pay over the taxes exacted from this taxpayer to the present Government of the Philippine Islands, and the sum of $26,843.02 paid by this taxpayer as aforesaid, and now comprising a part of the separate fund under statute held by the Treasury of the United States still legally, and in equity and good conscience belongs to the taxpayer, and should be returned to it.

A summary of the taxes paid by months, which are included in this claim, are as follows:

June 1935, paid July 21, 1935, $5770.16, July 1935, paid August 31, 1935, $5872.65, August 1935, paid September 30, 1935, $4267.37, September 1935, paid October 31, 1935, $3656.40, and October 1935, paid November 30, 1935, $7276.44, total $26,843.02.

14. All of the aforesaid exactions from the plaintiff in the guise of so-called taxes, in the amount of 3¢ a pound on the first domestic processing of Philippine coconut oil, amounting to the total of $26,843.02, as aforesaid, have been collected by the defendant from plaintiff under and by virtue of the express provisions of sub-section (f) of said Act, making other provisions of the revenue laws (including [fol. 12] penalties), applicable, under threats of penalties, interest, imposition of a lien against plaintiff's properties and the properties of others similarly situated, and distraint or other forcible collection proceedings, and because of said threats, duress, and coercion plaintiff has actually paid to the defendant as Collector of Internal Revenue, as aforesaid, the sum of $26,843.02 for the period and upon the date above specifically set forth.

15. For any, each and every of the above reasons and upon the facts and the law, the collection of the said sum of $26,843.02 from the plaintiff was erroneous and illegal and under and by virtue of an unconstitutional and void Statute, being Sec. 602½ of the Revenue Act of 1934, and the plaintiff is entitled to a refund of said sum of $26,843.02, together with interest thereon at 6% per annum from the 31st day of July, 1935, upon $5,770.16, with interest thereon at 6% per annum upon $5,872.65 from August 31, 1935, with interest thereon at 6% per annum upon $4,267.37 from September 30, 1935, with interest thereon at 6% per annum upon $3,656.40 from October 31, 1935, and with interest thereon at 6% per annum upon $7,276.44 from November 30, 1935, the dates said sums were paid by the plaintiff to the Collector of Internal Revenue, at Omaha, Nebraska, and that the defendant is indebted to the petitioner for that sum with said interest.

16. Wherever reference is made in this bill of complaint to a "tax" upon the first domestic processing of Philippine coconut oil it is for convenience only since the exaction complained of is not a true tax and should not have been levied nor collected from the plaintiff for the above reasons.

Wherefore, plaintiff prays for a judgment against the defendant upon the facts and law for the principal sum of $26,843.02, together with interest thereon at 6% per annum upon $5,770.16 from the 31st day of July, 1935, with interest thereon at 6% per annum upon $5,872.65 from the 31st day of August, 1935, with interest thereon at 6% per annum upon $4,267.37 from the 30th day of September, 1935, with interest thereon at 6% per annum upon $3,656.40 from the 31st day of October, 1935, and with interest thereon at 6% per annum upon $7,276.44 from the 30th day of November, 1935, together with its reasonable costs and disbursements, and for such other and further relief in the premises as may be just.

Crossman, Munger & Barton, Alfred C. Munger, Attorneys for Plaintiff.

[fol. 13] *Duly sworn to by Wm. Newton, Jr. Jurat omitted in printing.*

EXHIBIT 1 TO PETITION

Sec. 602½ Processing Tax on Certain Oils

"(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernel oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound to be paid by the processor, upon the first domestic processing of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence, shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands or any other possession of the United States, or (B) was produced wholly from materials of the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after the date of the enactment of this Act, or (D) was purchased under a bona fide contract [fol. 14] entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article in-

tended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

"(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessments by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

• • •

"(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Revenue Act of 1926, shall, in so far as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section."

[fol. 15]

EXHIBIT 2 TO PETITION

Form 843
Treasury Department
Internal Revenue Service
Revised June, 1930

Claim

To Be Filed With The Collector Where Assessment Was Made or Tax Paid

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

Collector's Stamp
(Date received)

☐ Refund of Tax Illegally Collected.

☐ Refund of Amount Paid for Stamps Unused, or Used in Error or Excess.

☐ Abatement of Tax Assessed (not applicable to estate or income taxes).

STATE OF NEBRASKA,

County of Douglas, ss:

Type or Print

Name of taxpayer or purchaser of stamps: Haskins Brothers & Co.

Business address: 115 Hickory Street (Street) Omaha (City) Nebraska (State)

Residence.....

[fol. 16] The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed—Collector of Internal Revenue, Omaha, Nebraska.

2. Period (if for income tax, make separate form for each taxable year) from June 1, 1935, to October 31, 1935.

3. Character of assessment or tax—3c a lb. on Philippine coconut oil under Sec. 602½A of Rev. Act of 1934.

4. Total amount of assessment, $26,843.02; dates of payment July 31, Aug. 31, Sept. 30, Oct. 31, Nov. 30, all 1935.

5. Date stamps were purchased from the Government.

6. Amount to be refunded $26,843.02

7. Amount to be abated (not applicable to income or estate taxes) ..... $

8. The time within which this claim may be legally filed expires, under Section 3228 (a) of U. S. Revised Stat. as amended July 31, Aug. 31, Sept. 30, Oct. 31, Nov. 30, all in 1939.

The deponent verily believes that this claim should be allowed for the following reasons:

1. The imposition of said taxes upon this taxpayer was by virtue of an unconstitutional and void statute, being Sec. 602½ of the Revenue Act of 1934 in that said statute was a scheme to regulate the production of domestic fats and oils, and the money thus raised is, by said statute, required to be held in a separate fund in the Treasury, and is attempted to be appropriated in advance to be paid to the Treasury of the Philippine Islands, and does not go to the general support of the Government of the United States. The taxpayer therefore has standing to challenge the legality of the exaction of such tax from it.

2. The exaction from this taxpayer and other processors of Philippine coconut oil of said payments provided for by Sec. 602½ of the Revenue Act of 1934 was by an unconstitutional and void statute, in that it provided for an expropriation of money from one group, i. e., the first do-

mestic processors in the United States of Philippine coconut oil, for the benefit of another group, i. e., the people of the Philippine Islands, and the said exaction was not imposed to effect regulation of a matter in which both groups are interested and in respect of which there is a power of [fol. 17] legislative regulation.

Par's. 3 to 13, on attached sheets, are a part hereof.

3. The said tax attempted to be imposed by Sec. 602½ (a) of the Revenue Act of 1934 upon said Philippine coconut oil first domestically processed by the taxpayer, and the integral and inseparable provision found in said sub-section (a) that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands is not within the delegated powers granted by the Constitution to the Congress of the United States, and said statute is therefore unconstitutional and void in its entirety.

4. The imposition of said tax upon plaintiff and others similarly situated, holding the same in a separate fund, and requiring the same to be paid over to the Treasury of the Philippine Islands, do not come within the taxing power of Congress under Article 1, Section 8, Clause 1 of the Constitution of the United States.

The so-called processing taxes were not imposed under or in conformity with the power vested in the Congress by Section 8 of Article 1, of the Constitution to levy and collect taxes, duties, imposts and excises, in that they were not imposed to pay the debts or provide for the common defense or the general welfare of the United States but were imposed for the benefit of the Philippine Islands, which are not a part of the United States within the meaning of this clause, and the said taxes are not being levied to pay the debts nor to provide for the common defense and general welfare of the United States.

5. The attempt by Congress to impose the tax provided for in Sec. 602½ (a) of the Revenue Act of 1934 as a means to the end of regulating production in the several States was an attempt to exercise a power not expressly granted to the Federal Government and not impliedly necessary for the exercise of any granted power, specifically the interstate commerce power, but is reserved to the States under the 10th Amendment, which is as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the States respectively or to the people."

6. Sec. 602½ (a) is entirely unconstitutional and void for the reason that the attempted exercise by the Congress of the United States of its power to tax and spend was not for a truly national purpose, nor for the general welfare of the United States, but was for the exclusive benefit of the people of the Philippine Islands, and the power to tax having [fol. 18] been exercised for an unauthorized and illegal purpose inseparably connected with the tax, the tax itself is unauthorized and void.

7. The Congress of the United States, in imposing the tax upon plaintiff and others similarly situated, provided for in Sec. 602½ (a) of the Revenue Act of 1934, and in providing that said taxes shall be held in a separate fund and paid over to the Treasurer of the Philippine Islands, has violated Article 1, Section 9, Clause 7 of the Constitution of the United States, which is as follows:

"No money shall be drawn from the treasury but in consequence of appropriations made by law; • • •"

there having been no valid nor sufficient appropriation made by law as to the said taxes upon Philippine Islands' coconut oil to authorize the same being paid over to the Treasury of the Philippine Islands.

8. The said tax imposed by Sec. 602½ (a) of the Revenue Act of 1934 upon Philippine coconut oil first domestically processed by plaintiff, and others similarly situated, and the provision of said Act that said taxes shall be held in a separate fund and paid over to the Treasury of the Philippine Islands, is in violation of the 5th Amendment to the Constitution of the United States, which provides in part:

"No person shall be • • • deprived of life, liberty or property, without due process of law • • •"

in that one group of citizens of the United States being the plaintiff and others similarly situated, are deprived of their property, and the valuable property rights of carrying on their business unmolested by prohibitory taxation, which

said taxes are not for general revenue for public purposes, but are taxes levied on one group of persons, i. e., processors of Philippine coconut oil, being the plaintiff and others similarly situated, for the exclusive benefit of another group of persons, i. e., the Government of the Philippine Islands.

9. The said taxes if construed as direct taxes violate Article 1, Section 9, Clause 4 and Article 1, Section 2, Clause 3 of the Constitution, because they are not apportioned according to population.

10. The said alleged taxes cannot be levied under Article 1, Section 8, Clause 3 of the Constitution, regulating commerce, because the processing of coconut oil done by plaintiff, is exclusively in intrastate commerce and cannot be regulated by Congress.

[fol. 19] 11. The imposition of said tax by said statute is arbitrary, capricious and therefore void because it is not a true tax, but a subterfuge to evade the requirement of the Philippine Independence Act (Act of March 24, 1934; 48 U. S. C. A. #1231 to 1247) which was in full force and effect from and after January 17, 1933, and at the present time, and which provides that two hundred thousand long tons of Philippine coconut oil may be imported from the Philippines each year into the United States free of duty, and said tax was attempted to be levied by Congress as an integral and inseparable part of a scheme to regulate and control the wholly intrastate manufacturing business of the taxpayer by forcing it to use much less coconut oil, and as substitutes therefor oils and fats produced domestically by the farmers and dairy interests of the United States, and by said tax the Congress attempt to arbitrarily and unreasonably exercise a power over domestic production and use of oils and fats not expressly granted nor delegated to it by the Constitution of the United States, nor reasonably to be implied therefrom, and the said tax is therefore in violation of the Tenth Amendment, and unconstitutional and void.

12. Sec. 602½(a) of the Revenue Act of 1934 is unconstitutional and void for the further reason that it provides for a tax of 3c a lb. on palm oil which may be used by this taxpayer in the manufacture of soap, but excludes from the said tax palm oil used in the manufacture of tin plate,

which is arbitrary, capricious, unreasonable and discriminatory and results in a lack of uniformity between the first domestic processing of palm oil by this taxpayer and all other processors except those using the same in the manufacture of tin plate, and hence is in violation of Article 1, Section 8, Clause 1 of the Constitution.

13. Said taxes so imposed on the taxpayer by 602½(a) of the Revenue Act of 1934 are unconstitutional and void for further reason that the taxes paid are still held in a separate fund in the Treasury of the United States earmarked for the Treasury of the Philippine Islands, but the Philippine Islands are not a part of the United States, and are no longer an insular possession of the United States, but are now, and since November 15, 1935, have been a separate nation and commonwealth, with their own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States, wherefore it is unauthorized, illegal and improper to pay over the taxes exacted from this taxpayer to the present Government of [fol. 20] the Philippine Islands, and the sum of $26,843.02 paid by this taxpayer as aforesaid, and now comprising a part of the separate fund under statute held by the Treasury of the United States still legally, and in equity and good conscience belongs to the taxpayer, and should be returned to it.

A summary of the taxes paid, by months, which are included in this claim, are as follows:

For Month of June, 1935, paid July 31, 1935	$5,770.16
For Month of July, 1935, paid Aug. 31, 1935	5,872.65
For Month of Aug. 1935, paid Sept. 30, 1935	4,267.37
For Month of Sept. 1935, paid Oct. 31, 1935	3,656.40
For Month of Oct. 1935, paid Nov. 30, 1935	7,276.44
	$26,843.02

Sworn to and subscribed before me this — day of ——, 193-. (Signed) (Signature of officer administering oath:) —— ——, (Title:) ——.

EXHIBIT 3 TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to

Feb. 5, 1936.

Haskins Bros. & Co., Omaha, Nebraska.

GENTLEMEN:

Reference is made to your claim for refund in the amount of $26,843.02, representing tax and interest alleged to have been erroneously paid under the provisions of section 602½ of the Revenue Act of 1934 on the first domestic processing of coconut oil during the period July 1935 to October 1935, inclusive.

[fol. 21] You contend that your claim should be allowed for the reason that section 602½ of the Revenue Act of 1934 imposes an injust and discriminating tax and is, in fact, unconstitutional.

You are advised that it is the province of this office to administer certain laws enacted by Congress and it is without authority to pass upon the constitutionality of such laws. Inasmuch as you have set forth no other contention in support of your claim for refund on which consideration can be given, it is the opinion of the Bureau that the processing or use of coconut oil was correctly subject to tax.

Your claim, therefore, is rejected in full.

Respectfully, Guy T. Helvering, Commissioner, by D. S. Bliss, Deputy Commissioner.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR ISSUANCE OF SUMMONS—Filed November 12, 1936

To the Clerk of said Court:

Please issue summons for defendant.

In the above-entitled cause.

Dated this 12th day of November, 1936.

Haskins Bros. & Co., Pl., by Alfred C. Munger, Atty.

[File endorsement omitted.]

[fol. 22] IN UNITED STATES DISTRICT COURT

SUMMONS AND MARSHAL'S RETURN—Filed November 18, 1936

UNITED STATES OF AMERICA,
District of Nebraska, Omaha Division:

The President of the United States of America to the Marshal of the District of Nebraska, Greeting:

You are hereby commanded to notify the Defendant George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska, that he has been sued by Haskins Bros. & Co., a corporation, in the District Court of the United States, for the District of Nebraska aforesaid, at Omaha, Nebraska; that unless he answer on or before the 14th day of December, A. D. 1936, the petition of said plaintiff, filed against him in the Clerk's office of said court, will be taken as true and judgment rendered accordingly.

You will make due return of this Summons on or before the 23rd day of November, 1936.

Witness, the Honorable Judges of the District Court of the United States for the District of Nebraska, at Omaha this 12th day of November, 1936.

R. C. Hoyt, Clerk, by John Nicholson, Deputy.
(Seal.)

If defendant fails to answer, plaintiff will take judgment against the defendant upon the facts and law for the principal sum of $26,843.02, together with interest thereon at 6% per annum upon $5,770.16 from the 31st day of July, 1935, with interest thereon at 6% per annum upon $5,872.65 from the 31st day of August, 1935, with interest thereon at 6% per annum upon $4,267.37 from the 30th day of September, 1935, with interest thereon at 6% per annum upon $3,656.40 from the 31st day of October, 1935, and with interest thereon at 6% per annum upon $7,276.44 from the 30th day of November, 1935, together with its reasonable costs and disbursements, and for such other and further relief in the premises as may be just.

Marshal's Costs:

Service	2.00
Mileage	
Expense (in lieu of mileage)	
Total	$2.00

[fol. 23] Return on Service of Writ

UNITED STATES OF AMERICA,
District of Nebr., ss:

I hereby certify and return that I served the annexed Summons on the therein-named George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska by handing to and leaving a true and correct copy thereof with him personally at Omaha in said District on the 13th day of November, A. D. 1936.

John C. Byrnes, U. S. Marshal, by Earl L. Young, Deputy.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SECURITY FOR COSTS—Filed December 21, 1936

Security for costs is hereby entered in the above cause, and the undersigned agrees to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court. And in default of payment by the plaintiff, of any costs ordered or adjudged to be paid by plaintiff it is hereby agreed and stipulated that execution may issue against the undersigned for any and all costs.

Dated this 11th day of November, 1936.

William Newton, Jr.

[File endorsement omitted.]

In United States District Court

Demurrer of Defendant to Petition—Filed December 9, 1936

To the United States District Court for the District of Nebraska, Omaha Division:

Comes now George W. O'Malley, individually and as Collector of Internal Revenue for the District of Nebraska, the above-named defendant in the above-entitled cause, by Joseph T. Votava, United States Attorney in and for the District of Nebraska, Omaha Division, and Ambrose C. Epperson, Assistant United States Attorney for said District, his attorneys, and respectfully demurs to plaintiff's complaint filed herein and for grounds of said demurrer says:

1. That said complaint fails to allege facts sufficient to constitute a cause of action.

[fol. 24] 2. That said complaint fails to state a cause of action against this defendant because it shows that the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States.

Respectfully submitted, Joseph T. Votava, United States Attorney. A. C. Epperson, Assistant United States Attorney.

[File endorsement omitted.]

In United States District Court for the District of Nebraska, Omaha Division

Law

No. 3615

Haskins Bros. & Co., a Corporation, Plaintiff,

vs.

George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska, Defendant

Order Sustaining Demurrer to Petition; Judgment—Filed December 16, 1936

The Court, having considered the Demurrer to plaintiff's petition herein, and being fully advised in the premises,

finds that said Demurrer is well taken and should be sustained, and the plaintiff, having given notice in open court that it does not desire to plead further, and intends to stand upon the Demurrer, the Court finds that said action should be dismissed.

It Is Therefore Ordered And Adjudged by the Court that the Demurrer of the defendant be and the same hereby is sustained.

It Is Further Ordered that this action be and the same hereby is dismissed at the cost of the plaintiff, to all of which the plaintiff excepts, and an exception is allowed.

Dated: This 16th day of December, A. D., 1936.

By the Court.

J. A. Donohoe, United States District Judge.

[File endorsement omitted.]

[fol. 25] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed December 24, 1936

To the Honorable James A. Donohoe, Judge of the District Court of the United States, for the District of Nebraska:

The plaintiff above named, Haskins Bros. & Co., feeling aggrieved by the order and judgment of this Court, filed in the above entitled action on the 16th day of December, 1936, hereby appeals from the said order and judgment to the United States Circuit Court of Appeals for the Eighth Circuit.

The errors upon which such appeal is based are contained in the Assignment of Errors, filed herewith.

Petitioner prays that its appeal be allowed, and that a citation issue as provided by law, and that an authenticated transcript of the record, proceedings and papers in this cause, duly authenticated, be forwarded to the said United States Circuit Court of Appeals for the Eighth Circuit, at St. Louis, State of Missouri.

The undersigned petitioner further prays that an order may be made and entered herein, allowing said appeal, and fixing the amount of security to be given by the said plaintiff and appellant, conditioned as provided by law.

That your petitioner hereby tenders bond in such sum as this Honorable Court may require, for the purpose of this appeal.

Dated this 24th day of December, 1936.

Haskins Bros. & Co., Plaintiff and Appellant, by Alfred C. Munger, Raymond M. Crossman, John L. Barton, William Stanley, Its Attorneys.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed December 24, 1936

Comes now the plaintiff above named, Haskins Bros. & Co., a corporation, and files the following Assignment of Errors, upon which it will rely in the prosecution of its appeal to the United States Circuit Court of Appeals for the Eighth Circuit.

[fol. 26]

I

The Court erred in sustaining the demurrer of the defendant to plaintiff's petition, upon the ground: "that said complaint fails to allege facts sufficient to constitute a cause of action".

II

The Court erred in sustaining the demurrer of the defendant to plaintiff's petition, upon the ground: "that said complaint fails to state a cause of action against this defendant, because it shows that the tax sought to be recovered was lawfully and correctly assessed and collected under valid and constitutional laws of the United States."

III

The Court erred in refusing to hold that it had jurisdiction of the parties and the subject-matter of this cause, by reason of the facts alleged in the petition and admitted by defendant's demurrer.

IV

The Court erred in holding that Section 602½ of the Revenue Act of 1934, insofar as the same applies to Philip-

pine Coconut Oil processed by plaintiff, and upon which plaintiff had paid the taxes set forth in the petition, was and is constitutional.

V

The Court erred in dismissing plaintiff's action.

VI

The Court erred in refusing to hold that plaintiff had complied, before filing this action, with all jurisdictional requirements as to filing claim for refund, the same having been denied, and the action being timely instituted.

VII

The Court erred in failing to find that the object and purpose of Section 602½ of the Revenue Act of 1934, insofar as it relates to Philippine Coconut Oil processed by plaintiff, was to raise the prices of competing oils and fats produced in the United States by exacting money from the processor of such Philippine Coconut Oil and paying over such monies intact to the Treasury of the Philippine Islands.

[fol. 27]

VIII

The Court erred in failing to find that Section 602½ of the Revenue Act of 1934 is a statutory plan to regulate intrastate agricultural production of certain domestically produced oils and fats competing with Philippine Coconut Oil, and that the exaction of said alleged taxes from plaintiff was an inseparable part of said plan.

IX

The Court erred in failing to find that the exaction from plaintiff of alleged taxes upon the first domestic processing by plaintiff of Philippine Coconut Oil was not to raise revenue to pay the debts or provide for the common defense or general welfare of the United States.

X

The Court erred in refusing to hold that Section 602½ of the Revenue Act of 1934 was and is unconstitutional.

XI

The Court erred in refusing to hold that the Philippine Islands, from and after the enactment of Section 602½ of the Revenue Act of 1934, on May 10, 1934, were not a part of the United States, within the meaning of the revenue clauses of the Constitution.

XII

The Court erred in refusing to hold that the Philippine Islands are not a part of the United States, from and after the enactment of the Philippine Independence Act and the qualification of the new Philippine government thereunder.

XIII

The Court erred in refusing to hold that plaintiff was totally unable to recover any of the taxes sued for by passing same on by increasing prices, or back by reducing costs, and that therefore plaintiff's property was taken by the exactions without due process of law.

XIV

The Court erred in failing to find that the condition subsequently provided for by Section 602½ (a) of the Revenue Act of 1934, to-wit: the provision by the Philippine [fols. 28-29] Government of any subsidy to be paid to the Philippine producers of copra and coconut oil, has not happened.

Dated this 24th day of December, 1936.

Haskins Bros. & Co., Plaintiff and Appellant, by Alfred C. Munger, Raymond M. Crossman, John L. Barton, William Stanley, Its Attorneys.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL AND FIXING BOND—Filed December 24, 1936

Upon the petition of Haskins Bros. & Co., plaintiff herein, praying for the allowance of an appeal in the above cited cause, It Is

Ordered By The Court, that the said petition be granted, and the appeal prayed for is allowed, upon the condition, however, that the said appellant furnish a bond, as required by law, in the amount of Two Hundred Fifty And No/100 ($250.00) Dollars.

Dated this 24th day of December, 1936.

By the Court.

J. A. Donohoe, United States District Judge.

Bond on appeal for $250.00, approved and filed December 24, 1936, omitted in printing.

[fol. 30] Citation, in usual form, showing service on Joseph T. Votava et al., filed December 24, 1936, omitted in printing.

[fol. 31] In United States District Court

Præcipe for Transcript and Acknowledgment of Service Thereof—Filed December 24, 1936

To R. C. Hoyt, Clerk Of The United States District Court, District of Nebraska, Omaha Division:

You Will Please Prepare, and within twenty (20) days from the date of the issuance of the Citation of Appeal in the above entitled case, transmit to the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri, duly authenticated copies of all of the papers, records and documents filed in this action, among them specifically the following:

1. Plaintiff's petition.
2. Præcipe for summons.
3. Summons with marshal's return.
4. Security for costs filed by plaintiff herein.
5. Demurrer of defendant to plaintiff's petition.
6. Order sustaining defendant's demurrer and dismissing plaintiff's action, dated December 16, 1936.
7. Petition for Appeal.
8. Assignment of Errors.

9. Order Allowing Appeal.
10. Bond, with Approval Thereon.
11. Citation, with admission of service.
12. This Præcipe of Appellant and Admission of Service Thereof.
13. Clerk's Certificate.

The said transcript to be prepared and duly authenticated and transmitted, as required by law, and the rules of this Court and the rules of the United States Circuit Court of Appeals for the Eighth Circuit.

Dated this 24th day of December, 1936.

Haskins Bros. & Co., by Alfred C. Munger, Raymond M. Crossman, John L. Barton, William Stanley, Its Attorneys.

[fol. 32] The Undersigned, attorneys of record for the above named George W. O'Malley, Individually, and as Collector of Internal Revenue For the District of Nebraska, defendant and appellee herein, Hereby Acknowledge Service of the above Præcipe for Transcript, and Acknowledge Receipt of a copy thereof, this 24th day of December, 1936. It is stipulated that the record shall consist of the foregoing items, and nothing more.

Joseph T. Votava, United States Attorney; Ambrose C. Epperson, Assistant United States Attorney, Attorneys of Record for the said Defendant and Appellee.

[File endorsement omitted.]

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 33] IN UNITED STATES CIRCUIT COURT OF APPEALS, EIGHTH CIRCUIT

CLERK'S CERTIFICATE

I, E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing printed record in the case of Haskins Bros. &

Co., a Corporation, Appellant, vs. George W. O'Malley, Individually, and as Collector of Internal Revenue for the District of Nebraska, Appellee, No. 10823, was printed under my supervision.

I do further certify that said above entitled cause has not yet been submitted to the United States Circuit Court of Appeals for the Eighth Circuit.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the City of St. Louis, Missouri, this twenty-eighth day of January, A. D. 1937.

E. E. Koch, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit. (Seal United States Circuit Court of Appeals, Eighth Circuit.)

[fol. 34] Supreme Court of the United States

Order Allowing Certiorari—Filed February 15, 1937

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted, and the case is set for hearing immediately following No. 659.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 41,227. United States Circuit Court of Appeals, Eighth Circuit. Term No. 687. Haskins Bros. & Co., petitioner, vs. George W. O'Malley, Individually and as Collector of Internal Revenue for the District of Nebraska. Petition for a writ of certiorari and exhibit thereto. Filed January 29, 1937. Term No. 687, O. T., 1936.

JAN 29 1937
CHARLES ELMORE CROPLEY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. [illegible]

HASKINS BROS. & CO., A CORPORATION, *Petitioner*,

v.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA, *Respondent*.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

PETITION.

WILLIAM STANLEY,
Attorney for Petitioner.

ALFRED C. MUNGER,
J. EDWARD BURROUGHS, JR.,
WILLIAM G. GASSAWAY,
Of Counsel.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1936.

No. ——.

HASKINS BROS. & CO., A CORPORATION, *Petitioner*,

v.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA, *Respondent*.

Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

PETITION.

Haskins Bros. & Co., a body corporate, prays that a writ of certiorari issue to bring before this Court the suit now pending in the United States Circuit Court of Appeals for the Eighth Circuit, there entitled "Haskins Bros. & Co., a corporation, appellant, against George W. O'Malley, individually and as Collector of Internal Revenue for the Dis-

trict of Nebraska, appellee, No. 10823, at law", which has not been submitted to, heard or decided by that Court.

OPINION BELOW.

The order of the District Court of the United States for the District of Nebraska, Omaha Division, sustaining the respondent's demurrer to the petitioner's petition, and dismissing said petition, is printed in the record at p. 24.

JURISDICTION.

The order sustaining the demurrer and dismissing said petition was entered on December 16, 1936. Appeal was taken and allowed and the case was docketed in the United States Circuit Court of Appeals for the Eighth Circuit on January 2, 1937. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13th, 1925.

QUESTION PRESENTED.

Whether, under the circumstances disclosed in the present case, the District Court of the United States for the District of Nebraska, Omaha Division, was in error in sustaining respondent's demurrer and dismissing petitioner's petition for the refund of certain taxes collected from petitioner by virtue of Section 602½ (a) of the Revenue Act of 1934.

STATUTES AND OTHER MATERIALS INVOLVED.

The Revenue Act of 1934, Section 602½ (a) (c. 277, 48 Stat. 680), is set forth in the appendix, *infra*, pp. 18 and 19.

STATEMENT.

Petitioner is engaged in the manufacture of soap and allied products, and owns and operates for this purpose a plant at Omaha, Nebraska, where the processes of manu-

facture are carried on exclusively intrastate in character within the limits of said state. In the course of its business petitioner uses large quantities of coconut oil wholly of Philippine production, which use constitutes the first domestic processing of coconut oil under the terms of Section 602½ (a) of the Revenue Act of 1934. Under this section there is imposed a processing tax of 3c per pound, to be paid by the processor upon the first domestic processing of coconut oil wholly the product of the Philippine Islands. During the months of June, July, August, September and October, 1935, petitioner used in the manufacture of soap intended for sale, 894,767⅓ pounds of coconut oil wholly the production of the Philippine Islands, the tax upon which, pursuant to the terms of said Section, amounted to $26,843.02, and payment of said sum was made by petitioner to the respondent, the Collector of Internal Revenue for the District of Nebraska, on July 31st, August 31st, September 30th, October 31st and November 30th, all in 1935.

On January 13th, 1936, petitioner filed with the Bureau of Internal Revenue of the United States, its claim for the refund of said sum of $26,843.02 (R. p. 16), which claim was rejected and denied by the Commissioner of Internal Revenue of the United States on the 5th day of February, 1936 (R. p. 20), and on November 12th, 1936, petitioner filed its petition in the District Court of the United States for the District of Nebraska, Omaha Division, against the respondent for the recovery of said sum of $26,843.02, with all accrued interest due thereon, for the reason that said sum had been illegally collected from petitioner by the respondent on account of the unconstitutionality of said Section 602½ (a), under and by virtue of which said sum had been exacted, as aforesaid.

In support of the judgment prayed for, petitioner alleged that petitioner is now, and was at the time of said payment, and for many years prior thereto, engaged in the business of manufacturing soaps and allied products, exclusively at Omaha, Nebraska, as hereinbefore set forth, and that, ac-

cordingly, the use of Philippine coconut oil in such manufacture was exclusivly intrastate in character, within the limits of the State of Nebraska. That Philippine coconut oil was an ingredient of a large proportion of its soaps, for which there was no substitute. That said coconut oil, including that on which the said sum of $26,843.02 was exacted from the petitioner as aforesaid, is not imported by the soap manufacturers or processors, but is shipped from the Philippine Islands to ports on the Atlantic and Pacific oceans in tank or other ocean-going ships and consigned to the dealers in such oil. It is unloaded and delivered to such dealers at the ports of entry, and, when so delivered, the importation of the oil and the transportation thereof from the Philippine Islands to the United States terminates. For the filling of orders from their customers, the dealers place the oil in railroad tank cars consigned to the plants or warehouses of the soap manufacturers or other users, who unload the tank cars and place the oil in their own storage tanks or other receptacles located in their own respective manufacturing plants; so that the interstate transportation or commerce in the oil terminates before any processing of the oil does or can commence. That because of circumstances beyond its control, petitioner was compelled to meet the competitive prices prevalent in the soap industry, and therefore, was unable to recover any of the exactions collected from it under said Section by increasing prices and thereby passing on to others the amount of such exactions. Petitioner also alleged it had been unable to recover said exactions or any parts thereof by reducing the prices paid for raw materials, wages and other costs of operation. That said tax of 3c per pound imposed by said Section constitutes about 30 per cent of the total manufacturing costs of petitioner's coconut oil soaps, and previous to the enactment of said Section, petitioner had been able to conduct its business at a substantial profit, but since the enactment of said Section, it has suffered operating losses, and has been unable to conduct its business at a profit.

Petitioner further alleged that by the Philippine Independence Act (Act of March 24, 1934, 48 USCA, #1231 to 1247) Congress, upon certain conditions in said Act expressed, provided over a period of years for the grant of independence to the Philippine Islands and that the Philippine Islands at the time of the institution of this suit had complied with all the requisites of said Act necessary to eventually perfect its independence, and that petitioner had been informed and believes that the Philippine Islands are no longer an insular possession of the United States but are now a separate nation and commonwealth, with its own constitution, form of government, legislature and elective officers, and have been recognized as such by the United States. That as required by said Section, the said sum of $26,843.02, and all other sums paid by petitioner upon the processing of said coconut oil since the enactment of said section, and all sums similarly paid by other soap manufacturers and other processors of said coconut oil, had been placed in a separate fund held exclusively for the benefit of and to be paid over in its entirety, to the Treasury of the Philippine Islands, and that said sum to be so paid over was in excess of $30,000,000.00. That the object and purpose of Congress in the enactment of said Section was not to raise revenue which which to pay the debts, or provide for the common defense or general welfare of the United States, but that said object and purpose of Congress was to regulate the volume of production and the selling prices of certain vegetable oils and fats produced within the United States, by compelling soap manufacturers and all other manufacturers using coconut oil, to substitute said domestic vegetable oils in place of coconut oil in the manufacture of their soaps, and that said section was a statutory plan to regulate intrastate production and manufacture. That all of the provisions thereof relating to the tax on said coconut oil, including the holding of the proceeds thereof as a separate fund, the payment of such separate fund to the Treasury of the Philippine Islands, and the

cessation of such payment after the Philippine Government provides by law for a subsidy to producers of copra and coconut oil are inseparable, and are interrelated, intertwined, interdependent and integrated parts of one scheme of legislation, not to raise revenue, but to further the general plan of regulation of agriculture and manufacturing incorporated in the Act of May 12th, 1933, c. 25, 48 Stat. 31, known as the "Agricultural Adjustment Act of 1933," and at the same time to create a fund out of such illegal exactions to be paid to the Philippine Government, provided the Philippine Government did not grant a subsidy to be paid to the producers of coconut oil or its allied products. That the proceeds secured under the Act were granted to the Philippines to compensate them for the breach of the agreement between the two countries permitting the entry of Philippine coconut oil products into the United States free from the imposition of a duty or other restrictions for a limited number of years after independence was granted to the Philippine Islands.

Petitioner further alleged that all of said sum of $26,843.02 collected by the respondent from the petitioner was collected under and by virtue of the express provisions of Subsection (f) of said Section 602½ (a), making other provisions of the revenue laws (including penalties) applicable under threats of penalties, interest, imposition of a lien against petitioner's properties, and distraint or other forcible collection proceedings, and because of such threats, duress, and coercion, petitioner paid said sum of $26,843.02, to the respondent as aforesaid, as collector of Internal Revenue.

The respondent filed a demurrer to said petition on December 9th, 1936, upon the following grounds:

> "1. That said complaint fails to allege facts sufficient to constitute a cause of action.
>
> 2. That said complaint fails to state a cause of action against this defendant because it shows that the tax sought to be recovered was lawfully and correctly

assessed and collected under valid and constitutional laws of the United States."

The District Court, on December 16th, 1936, the petitioner not desiring to plead further, sustained the demurrer and dismissed said petition, and petitioner, on December 24th, 1936, appealed to the United States Circuit Court of Appeals for the Eighth Circuit, and said appeal is now pending in said Court.

SPECIFICATION OF ERRORS TO BE URGED.

Each of the errors assigned by petitioner (R. 25-28) in support of its appeal to the Circuit Court of Appeals for the Eighth Circuit will be relied upon in this Court.

REASONS FOR GRANTING THE WRIT.

I.

The sole question presented in this case is the constitutionality of those portions of Section 602½ (a) of the Revenue Act of 1934, relating to the processing tax on Philippine coconut oil. Since the enactment of said Section 602½ (a), more than $40,000,000[1] has accumulated by virtue of the tax placed upon Philippine Coconut Oil by said section, and is now being held as a separate fund to be paid to the Treasury of the Philippine Islands.

That part of Section 602½ (a) providing for a tax on Philippine Cocoanut Oil has been the subject of much litigation. Numerous injunction suits have been filed, but the constitutionality of said Section has never been determined by the highest Courts of this land, and is consequently a matter of much conjecture. In two of these cases the District Courts held said Section to be unconstitutional and granted permanent injunctions against the collection of taxes provided for under said Section. Both of these

[1] The original petition filed in the District Court stated that this sum was $30,000,000.00. Now we are informed that it has increased to over $40,000,000.00.

judgments were reversed by the Circuit Court of Appeals exclusively upon the question of remedy, and the appellate Court, accordingly, did not go into the constitutionality of said Section. Certiorari to the Court of Appeals in these two cases was petitioned for in this Court and denied.

In three other injunction cases, the District Court refused injunctions exclusively upon the question of the remedy without going into the constitutional questions. In two of these latter three cases, appeals were taken to the Circuit Court of Appeals, wherein the cases are now pending. In addition to these injunction cases, numerous other similar cases wherein temporary restraining orders have already been issued are now pending in the District Courts throughout this Country.

One injunction case was brought in the District of Columbia to enjoin the payment over to the Treasury of the Philipine Islands of the proceeds collected under said Section. The Lower Court dismissed the bill of complaint, and the United States Court of Appeals for the District of Columbia affirmed the ruling of the Lower Court, exclusively on remedial grounds, and without any ruling on any constitutional issue, and a writ of certiorari to the appellate Court was petitioned for in this Court and denied.

In addition to the instant case, another case involving a refund entitled "The Cincinnati Soap Company, a corporation, against The United States of America", was brought in the United States District Court for the Southern District of Ohio, Western Division, and a demurrer to the same sustained by the latter Court whereon an appeal has been entered to the United States Circuit Court of Appeals for the Sixth District, and your petitioner has been advised that, pending such appeal, The Cincinnati Soap Company has petitioned this Court to issue a writ of certiorari to the United States Circuit Court of Appeals for the Sixth District, to review the judgment of the District Court.

The doubt as to the constitutionality of said section effects the relationship of this Country with a foreign Gov-

ernment, the Philippine Islands, who claim that by virtue of said Section, they are entitled to an immediate payment of all funds accumulated by the exaction of said tax, and have made demand upon the proper officials of the United States for the payment of said funds, and it is to be presumed that they have never been paid over to the Treasury of the Philippine Government, because of the grave question as to whether that part of Section 602½ (a) pertaining to the tax on Philippine Coconut Oil is constitutional. It is submitted, this case presents a matter of such importance as to call for the exercise by this Court of its supervisory powers, for the ultimate determination of the questions presented by the present suit will greatly clarify the relationship existing between the Governments of the United States and the Philippine Islands. The importance of the constitutionality of this Section to the Philippine Islands can be readily seen, when one realizes that the bonded debt of the Philippine Islands is only $48,000,000, a sum slightly in excess of the amount so far collected by virtue of the tax on Philippine coconut oil.

In addition to quieting litigation in Court, and to clarifying the relationship existing between the Governments of the United States and the Philippine Islands, public interest will be greatly promoted by the prompt determination by this Court of the question involved. This is illustrated by the facts concerning the petitioner. The tax has a destructive effect on the possibility of profit by many soap manufacturers, and is, owing to doubts about its constitutionality, a disturbing, dislocating and confusing element in the soap industry, and no doubt in other industries which use coconut oil.

II.

The order of the District Court of the United States for the District of Nebraska, Omaha Division, in sustaining the demurrer and dismissing said petition, was clearly in error, for such order is, in effect, a determination that said

tax was assessed and collected under a valid and constitutional law of the United States, and it is submitted that said Section 602½ (a), insofar as the tax on Philippine coconut oil is concerned, is not a true revenue measure, but an unconstitutional exaction for the following reasons:

(a) *Only a cursory examination of Section 602-1/2 (a) of the Revenue Act of 1934 is necessary to discover that it is merely the Agricultural Adjustment Act in miniature and therefore unconstitutional under the Butler decision.* It provides, in part, as follows:

> "All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."

The real purpose of the act is to regulate agricultural production and prices with respect to certain commodities and this is shown upon its face; it embodies the same principle of agricultural control and regulation as was involved in the Agricultural Adjustment Act. It is a counterpart of and complementary to that Act, and in its effects, and in its effort to raise the price of agricultural products, it may be said to be the Agricultural Adjustment Act in miniature, and is completely controlled and clearly unconstitutional under the decision of the *United States* v. *Butler*, 297 U. S. 1. It was designed to stimulate the business of the American farmer in oils and fats that compete with those of the Philippine Islands. This purpose is obvious. Congress took pains to see that no part of the funds raised by the act should find its way to the Philippine producers of coconut oil. Congress in the passage of this statute was attempting, not to raise revenue for the purpose of defraying

the ordinary expenses of the government, but to restrict and limit the importation of coconut oil into the United States by means of a heavy excise tax upon the use of such oil by American processors. Obviously, if the taxes so collected were given to the Philippine Government and by that Government distributed to the coconut oil producers on the Islands, then the eventual effect would be the same as if no tax had been imposed. Under such circumstances, the Philippine producers of coconut oil would be in a position to reduce the price of the oil to the American manufacturer by the amount of the tax, for the reason that the tax would ultimately be refunded to them. Because of this possibility, Congress prohibited the Philippine Government from subsidizing the producers of coconut oil and allied products, thereby attempting to place the Philippine producers at a distinct disadvantage in dealing with the American producers of substitutes for this product.

When the act was up for final passage by the Senate the following discussion between Senators Norris, Connally, Borah, and Reed clearly demonstrates the real purpose of the act:

> Senator Norris: There has been presented by the committee amendment a very serious question in which the farmers of the United States are particularly interested. They are all very much worried about bringing into this country copra and coconut oil, which interferes with the sale of fats and oils of all kinds produced here in America from cattle, hogs, and so forth. • • •
>
> Within the last year or so the administration has started on a farm-relief program. We have limited the production of all, or practically all, farm products. The farmer, concerned with that limitation, finds that fats and oils imported from the Philippine Islands do not have to pay a tax under the tariff law, and therefore, without any tax of any kind levied upon them, come in competition with the fats and oils produced in this country. • • •
>
> • • • • • • • • • •

Mr. President, my amendment in the first place provides that the revenue derived from this tax shall not be covered into the Treasury of the United States but shall be held in a separate fund and paid to the Philippine Government. The objection first raised was and is that the Philippine government could still grant a bonus or subsidy in the same amount to the producers of coconut oil and copra in the Philippines, and thus nullify the effect of our tax. In other words, if the Philippine government should do that, our tax would be absolutely of no effect so far as the importation of coconut oil and copra from the Philippines are concerned. It would not help us and it would not help the American farmer. The Philippine producer of the coconut oil and copra would be able, with a bonus of the same amount as the tax, to sell as he did before, and the American farmer would get no benefit from the tax.

To meet that objection, it is provided in my amendment that if the Philippine government at any time shall grant a bonus or subsidy for the production of coconut oil or copra, then the provision will at once become null and void and of no effect, and the producers will stand under the amendment of the committee just as it was reported.

• • • • • • • • •

Senator Connally: If that be true, I cannot see why the amendment would not have the effect of aiding the domestic producer, because the tax would be paid, and it is immaterial from his viewpoint what is done with it, whether it is thrown in the sewer or given to the Philippine government.

• • • • • • • • •

Senator Borah: Mr. President, I found last night that the A. A. A. Act expressly exempts the Philippine Islands.

Senator Norris: Yes; it is done by express statute. I have it here on my desk.

Senator Reed: We could extend the A. A. A. by an amendment to cover the Philippines.

Senator Norris: I think probably we could.

Senator Borah: That is really what we are doing in this bill.[1]

Therefore the decision of this Court in the Butler case applies to this act, when the Court said:

> "The Act invades the reserved rights of the States. It is a statutory plan to regulate and control agricultural production, a matter beyond the powers delegated to the Federal Government. The tax, the appropriation of the funds raised, and the direction for their disbursement, are but parts of the plan. They are but means to an unconstitutional end."

(b) *Section 602½ (a) of the Revenue Act of 1934 also offends the Constitution because the petitioners are taxed for the support of the Philippine Islands.* The disposition of the funds derived from the tax plainly violates the conception of a true tax. The proceeds of the tax never reach the General Fund of the Treasury of the United States for the reason that they are isolated and segregated in advance and held as a separate fund to be turned over to the Philippine government for its sole benefit, with but one negative restriction. The United States retains no affirmative control whatever over their spending or disposition, and to speak of this exaction as a revenue measure does violence to the very provisions of the Act itself, an act from which not a dollar of revenue will be derived for the support of the United States.

Even before the passage of the Philippine Independence Act Congress could not lay taxes for the general welfare of the Philippine Islands, as they have never been a part of the United States within the meaning of Article 1, Section 8, Clause 1 of the Constitution.[2] In *Downes* v. *Bidwell,*

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[1] Pages 6572 to 6575 of the Congressional Record—Senate—73rd Congress.

[2] This was called to the attention of the Senate when the Act was under discussion by Senator Reed, who said: "I do not believe that the Federal Government has the constitutional power to levy a tax for the benefit of any government, whether it is the government of the City of Omaha, or the government of the Philippine Islands, or a government set up under any other system."

182 U. S. 286, the Court held that Porto Rico was a territory appurtenant and belonging to the United States, but not a part of the United States within the Revenue Clauses of the Constitution, and from *The Case of the 14 Diamond Rings*, 183 U. S. 180, it is clear the decision in the of *Downes* v. *Bidwell* applied with equal force to the Philippine Islands as to Porto Rico.

The case at bar also may be said to fall within the doctrine established in *Citizens Savings and Loan Association* v. *Topeka*, 20 Wall. 655; *Parkersburg* v. *Brown*, 106 U. S. 487; *Cole* v. *LaGrange*, 113 U. S. 1; and *Ochoa Hernandez* v. *Morales*, 230 U. S. 139, as Section 602½ (a) is an expropriation of money from one group for the benefit of another, and Congress has not the power to tax one class for the benefit of another.

Congress, unquestionably, has the right to levy a processing tax on coconut oil, but in levying such a tax, it is limited by Article 1, Section 8 of Clause 1 of the Constitution, wherein Congress is given the power "to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States," and as said in *U. S.* v. *Butler*, *supra*, "a tax in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government. • • • " Quoting from *Smith* v. *Turner*, 7 Howard 446 (Passenger cases), "Nor has Congress power to lay taxes to pay the debts of a state, nor to provide by taxation for its general welfare. Congress may tax for the Treasury of the Union and here its power ends," and *Story*, Volume 1, Chapter XIV, Paragraph 922, says:

> "A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defense and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defense proposed

by a tax be not the common defense of the United States, if the welfare be not general but special or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defense, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mohammedanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles."

(c) *Section 602½ (a) of the Revenue Act of 1934 may be held unconstitutional because the amount of the tax is excessive.* It is submitted that the exaction here involved of three cents per pound is so grossly excessive that it amounts to the taking of taxpayers' property without due process of law in violation of the Fifth Amendment. Coconut oil before the passage of Section 602½ (a) sold for three cents a pound upon the United States market, and Section 602½ (a) imposes a one hundred per cent tax, a tax which doubled the market value of the product. The record shows that prior to the passage of said Section 602½ (a) the petitioner was able to make a substantial profit in his business. A taxpayer may be relieved from what amounts to confiscation in the guise of taxation. In *Great Northern Railway Co.* v. *Weeks, et al.*, 297 U. S. page 135, the court struck down a state tax upon railroad properties because the rate fixed was so excessive as to amount to a taking of the property without due process of law. While in that case state taxation was involved, from the opinion it is clear that the same principle is applicable to Federal taxation, and insofar as due process of law is concerned, the principles that apply under the Fourteenth Amendment to state legislation also apply to Federal taxation under the due process clause of the Fifth Amendment. *Heiner* v. *Donnan*, 285 U. S. 312.

CONCLUSION.

It is therefore respectfully urged that this case is such as to call for the exercise by this Court of its supervisory powers. The constitutionality of that part of Section 602½ (a) pertaining to the tax on Philippine coconut oil, has never been determined or passed upon by the highest Courts, nor have the highest Courts ever passed upon the constitutionality of any similar revenue measure, as Section 602½ (a) is dissimilar to any other revenue measure ever enacted by Congress. While the present suit is only to recover $26,843.02, with accrued interest thereon, a decision by this Court will have a far-reaching effect. It will greatly clarify the relationship between the United States and Philippine governments, it will be of great benefit to the soap manufacturers, and it should be of particular interest to every taxpayer within this Country, for not only will it determine the rights of petitioner to a refund of said $26,843.02, but will also determine the status of the immense sum collected by virtue of said Section, at this time in excess of $40,000,000, and increasing in size daily. The United States has no interest or title in this sum which is in excess of $40,000,000. It has not been collected and paid into the general Treasury as part of the revenue of the United States, and in no manner can the United States benefit by it. Your petitioner has been advised that the Comptroller General has approved payment of a part of this fund to the Treasury of the Philipine Islands, and it is only necessary for the Secretary of the Treasury and the Treasurer to sign the warrants in order for so much of said funds so approved for payment to leave the United States and become the property of the Philippine Islands, from whom they could not be recovered. Therefore, unless this Court takes jurisdiction over this case, and speedily determines the constitutionality of that part of Section 602½ (a) pertaining to the tax on Philippine coconut oil, the United States may suffer a loss of all funds collected by

virtue of said tax. Certainly a possible loss of such a huge sum of money should be of much concern to the United States Government and to the taxpayers of this Country.

WHEREFORE, it is respectfully submitted that this petition for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit, to review the judgment of the District Court of the United States for the District of Nebraska, Omaha Division, should be granted.

Respectfully submitted,

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WILLIAM G. GASSAWAY,
Of Counsel.

APPENDIX

Revenue Act of 1934, c. 277, 48 Stat. 680:

SEC. 602½. PROCESSING TAX ON CERTAIN OILS.—(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal* oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil or of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the

*So in original.

producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 687

HASKINS BROS. & CO., a Corporation,
Petitioner,

v.

GEORGE W. O'MALLEY, individually and as Collector of Internal Revenue for the District of Nebraska,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER

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4. This device for regulating intrastate matters in the guise of a tax is condemned by the principles enunciated in the AAA case, *U. S.* v. *Butler*. Assuming the minority in that case were justified in believing the regulatory effects of that statute to be doubtful and speculative, those in our case are definite and certain 71

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

HASKINS BROS. & CO., a Corporation, *Petitioner*, v. GEORGE W. O'MALLEY, individually and as Collector of Internal Revenue for the District of Nebraska, *Respondent*.	No. 687

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR PETITIONER

OPINION BELOW

The United States District Court for the District of Nebraska, Omaha Division, in which the petition was filed, rendered no opinion. Its order sustaining the respondent's demurrer to the petition and dismissing the petition is printed in the Record at pages 25 and 26. The case was not heard or submitted in the Circuit Court of Appeals for the Eighth Circuit.

JURISDICTION

The order sustaining the demurrer and dismissing the petition was entered in said District Court on December

16, 1936 (R. 25-26). The petition for writ of certiorari was filed January 29, 1937, and was granted on February 15, 1937, prior to hearing or submission of the appeal in the Circuit Court of Appeals for the Eighth Circuit, the appeal having been taken and allowed and the case docketed therein on January 2, 1937 (R. 32). *The Three Friends,* 166 U. S. 1, 49; *U. S.* v. *Bankers Trust Co.,* 293 U. S. 548; *Retirement Board* v. *Alton R. Co.,* 295 U. S. 330, 333-4. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, and under Section 8(b) of that Act (43 Stat. 936, 938-940).

SUMMARY STATEMENT OF THE CASE

This is a suit at law[1] for the recovery of $26,843.02 collected by the Respondent, George W. O'Malley, as Collector of Internal Revenue for the District of Nebraska, from the Petitioner, Haskins Bros. & Co., an Iowa corporation engaged in the business of manufacturing soap with its principal office and place of business in the city of Omaha, Nebraska. Said amount of $26,843.02 was claimed by the Respondent to be due from the Petitioner as a tax imposed by Section 602½ of the Revenue Act of 1934 (Act of May 10, 1934, Chapter 277, 48 Stat. 763) at the rate of three cents a pound on the first domestic processing of coconut oil of Philippine origin used by the Petitioner in its business during the months of June, July, August, September and October, 1935 (R. 1, 2, 12). Payments to the Respondent were made as follows:

---

[1]**The jurisdiction of the United States District Court is based on U. S. C. A., Title 28, Section 41, Subdivisions 1 and 5.**

For Month of June, 1935, paid July 31, 1935	$5,770.16
For Month of July, 1935, paid Aug. 31, 1935	5,872.65
For Month of Aug., 1935, paid Sept. 30, 1935	4,267.37
For Month of Sept., 1935, paid Oct. 31, 1935	3,656.40
For Month of Oct., 1935, paid Nov. 30, 1935	7,276.44
	$26,843.02

On January 13, 1936, the Petitioner filed with the Commissioner of Internal Revenue a claim in prescribed form for the refund of said amount of $26,843.02. The Commissioner of Internal Revenue rejected said claim on February 5, 1936 (R. 22).

The tax was levied purely as an internal revenue tax and its validity must depend on its being such, since petitioner does not import coconut oil from the Philippine Islands but purchases all of its supplies thereof from dealers who import the same. The first domestic processing does not take place until the coconut oil has come to rest in petitioner's tanks located in the city of Omaha, Nebraska (R. 3, 4). There is some Philippine coconut oil imported into the United States and used therein without being processed in the United States. Under the terms of Section 602½ of the Revenue Act of 1934 this oil would not be taxable (R. 4). The entire burden of the processing tax is borne by petitioner because competitive conditions in the sale of soap are such that none of it can be passed on (R. 5). The proceeds of the tax, under the terms of the statute, do not go into the general fund of the United States but into a special fund for transmission to the autonomous Government of the Commonwealth of the Philippine Islands. None of the proceeds of this tax collected from petitioner or from others have yet been remitted to the Government of the

Commonwealth of the Philippine Islands. That Government has given no subsidy to its producers of coconut oil or growers of copra (R. 6). The amount in the special fund was at the time this suit was brought in excess of thirty million dollars (R. 6). Petitioner contends that the statute in question is unconstitutional and on this account demands a refund (R. 8, 12).

THE STATUTES INVOLVED AND THEIR LEGISLATIVE HISTORY

The principal statute involved is Section 602½ of the Revenue Act of 1934 (Act of May 10, 1934, Chapter 277, 48 Stat. 763). This is printed in full in the Appendix, pages i-iv. Subdivision (a) of Section 602½ of the Revenue Act of 1934, which levies the processing tax complained of, in so far as it applies to coconut oil of Philippine origin, reads as follows:

> "There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. * * * All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For

> the purposes of this section the term 'first domestic processing' means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate."

The provision for a processing tax upon coconut oil of Philippine origin was placed in the Revenue law of 1934 at the request of domestic producers of lard, cottonseed oil, tallow, peanut oil, soy bean oil, fish oils and butter.[1] The object was of course to benefit these domestic oils and fats. It soon appeared, however, that the imposition of such a processing tax might be considered a breach of faith toward the producers of coconut oil in the Philippines in that in the Philippine Independence Act (§ 6b) the United States had undertaken to levy no import tax upon the first 200,000 long tons of coconut oil imported from the Philippine Islands. It was, therefore, proposed that the Revenue Act be amended to provide that all of the proceeds of the processing tax on coconut oil of Philippine origin be turned over to the Philippine Government. This was objected to on the ground that the Philipping Government could nullify the intended effect of the tax, that is, to benefit domestic oils and fats, by granting a subsidy to its producers of coconut oil, copra and allied products. In the course of the bill through Congress an amendment was therefore proposed and carried which provided as follows:

> "All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and

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[1]**See Revenue Revision 1934, hearings before the Committee on Ways and Means, House of Representatives, 73d Congress, 2d Session, page 579.**

paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."

(See p. 70, footnote 9, for references to Senate hearings and debates.)

That the original proposal was regarded as a breach of faith toward the Philippine producers of coconut oil was expressly recognized by the President of the United States. On May 28, 1934, the Chief Executive dispatched the following letter to Congress:

"To the Congress of the United States:

"Early in the present session of the Congress the Philippine Independence Act was passed. This Act provided that after the inauguration of the new interim or commonwealth form of government of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law. Certain exceptions, however, were made. One of these exceptions required levying on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of 448,000,000 pounds, the same rates of duty now collected by the United States on coconut oil imported from foreign countries.

"It is, of course, wholly clear that the intent of the Congress by this provision was to exempt from import duty 448,000,000 pounds of coconut oil from the Philippines.

"Later in the present session, the Congress in the revenue act imposed a 3-cent per pound processing tax on coconut oil from the Philippines. This action,

was, of course, directly contrary to the intent of the provision in the independence act cited above.

"During this same period, the people of the Philippine Islands, through their legislature accepted the provisions of the independence act on May 1, 1934.

"There are three reasons why I request reconsideration by the Congress of the provision for a 3-cent-per-pound processing tax:

"First. It is a withdrawal of an offer made by the Congress of the United States to the people of the Philippine Islands.

"Second. Enforcement of this provision at this time will produce a serious condition among many thousands of families in the Philippine Islands.

"Third. *No effort has been made to work out some form of compromise* which would be less unjust to the Philippine people and at the same time attain, even if more slowly, the object of helping the butter and animal fat industry in the United States.

"I, therefore, request reconsideration of that provision of the revenue act which relates to coconut oil in order that the subject may be studied further between now and next January, and in order that the spirit and intent of the independence act be more closely followed.

(Signed) Franklin D. Roosevelt."

(Congressional Record, 73d Cong., 2d Sess., Volume 78, Part 9, Page 9682) [Emphasis supplied].

The present status of the Philippine Islands is determined by the Philippine Independence Act (Act of March

24, 1934, ch. 84, 48 Stat. 456 *et seq.*) printed in full in the Appendix at page iv *et seq.*, the Philippine Constitution printed in full in the Appendix at page xxiv *et seq.*, and the Ordinance appended to the Philippine Constitution printed in full in the Appendix at page lv *et seq.* The Philippine Islands are now an autonomous government by reason of the following facts: On May 1, 1934, the Philippine Legislature accepted the Philippine Independence Act. House Document No. 400, 74th Cong., 2d Sess., page 1. On February 8, 1935, a Philippine Constitutional Convention adopted a Constitution for the Philippines. *Ibid.*, pages 5-24. On March 23, 1935, the President of the United States approved this Constitution as in substantial conformity with the Philippine Independence Act. World Almanac, 1937, page 568. On May 14, 1935, the People of the Philippines approved and adopted this constitution. House Document No. 400, 74th Cong., 2d Sess., pages 24, 30. On September 15, 1935 the President, legislature and other officials of the New Philippine Government were elected (New York Times, Sept. 17, 1935, page 15:4), and on October 13, 1935 the results of the election were certified to the United States Government. New York Times, Oct. 13, 1935, page 29:5. On November 15, 1935, the President of the United States inaugurated the new Government of the Commonwealth of the Philippines by proclamation. House Document No. 400, 74th Cong., 2d Sess., page 73.

SPECIFICATION OF ERRORS

The United States District Court for the District of Nebraska, Omaha Division, erred:

1. In sustaining respondent's demurrer to petitioner's petition (Assignments I, II; R. 27).

2. In failing and refusing to overrule respondent's demurrer to petitioner's petition (Assignments I, II; R. 27).

3. In holding and concluding that petitioner's petition failed to allege facts sufficient to constitute a cause of action against respondent (Assignments I, II, V; R. 27, 28).

4. In failing and refusing to hold that it had jurisdiction of the parties and of the subject-matter of this cause (Assignments III, VI; R. 27, 28).

5. In holding and concluding that Section 602½ of the Revenue Act of 1934 in so far as the same attempts to impose a processing tax upon coconut oil of origin in the Philippine Islands is constitutional (Assignments II, IV, VII, VIII, IX; R. 28).

6. In failing and refusing to hold that Section 602½ of the Revenue Act of 1934 in so far as the same attempts to impose a processing tax upon coconut oil of origin in the Philippine Islands is unconstitutional (Assignments VII, VIII, IX, X; R. 28).

7. In failing and refusing to hold that petitioner had complied before filing this action with all jurisdictional requirements as to filing claim for refund (Assignment VI; R. 28).

8. In failing and refusing to hold that the object and purpose of the processing tax imposed by Section 602½ of the Revenue Act of 1934 upon coconut oil of origin in the Philippine Islands was to raise the prices of competing oils and fats produced in the United States (Assignment VII; R. 28).

9. In failing and refusing to hold that Section 602½ of the Revenue Act of 1934 did not levy an excise tax but enacted a statutory plan to regulate the intrastate production and sale of domestically produced oils and fats which are in competition in the United States with coconut oil of origin in the Philippine Islands (Assignment VIII; R. 28).

10. In failing and refusing to hold that the provision in Section 602½ of the Revenue Act of 1934 for the payment of the proceeds of said alleged processing tax upon coconut oil of origin in the Philippine Islands to the Philippine Government was an inseparable part of a statutory plan and scheme for regulating matters of intrastate concern (Assignment VIII; R. 28).

11. In failing and refusing to hold that the exaction imposed by Section 602½ of the Revenue Act of 1934 upon domestic processing of coconut oil of origin in the Philippine Islands was not to raise revenue, to pay the debts, or provide for the common defense or general welfare of the United States (Assignment IX; R. 28).

12. In holding and concluding that the exaction imposed by Section 602½ of the Revenue Act of 1934 upon the domestic processing of coconut oil of origin in the Philippine Islands was to raise revenue, to pay the debts, or provide for the common defense or general welfare of the United States (Assignment IX; R. 28).

13. In failing and refusing to hold that the Philippine Islands at all times after the enactment of Section 602½ of the Revenue Act of 1934 were not a part of the United States within the meaning of the revenue clauses of the Federal Constitution (Assignments XI, XII, R. 29).

14. In failing and refusing to hold that from and after November 15, 1935, when the autonomous government of the Commonwealth of the Philippine Islands was duly established, the Philippine Islands were not a part of the United States within the meaning of the revenue clauses of the Federal Constitution (Assignment XII, R. 29).

15. In failing and refusing to hold that petitioner was totally unable to recover any of the taxes sued for by passing on the same to customers in increased prices (Assignment XIII; R. 29).

16. In failing and refusing to hold that the Government of the Commonwealth of the Philippines has never paid any subsidy to the producers of coconut oil, copra and allied products in the Philippine Islands (Assignment XIV, R. 29).

ARGUMENT

Section 602½ of the Revenue Act of 1934 levies a tax of three cents per pound upon the first processing of coconut oil within the United States. It is clear from the legislative history of the Act that this tax was imposed for the aid and benefit of producers of domestic vegetable and animal oils and fats. By the provisions of the Act itself, the proceeds of the tax upon coconut oil produced in the Philippines do not become a part of the funds of the United States Government, since it is required that they "shall be held as a separate fund and paid to the treasury of the Philippine Islands". No restriction is imposed upon that Government in respect of the use of such proceeds, but it is provided that "if at any time the Philippine Government provides by any law for any subsidy to be paid to the pro-

ducers of copra, coconut oil or allied products, no further payments to the Philippine treasury shall be made under this subsection".

The Revenue Act of 1934 was passed about two months after passage of the Philippine Independence Act, which was approved March 24, 1934. By that Act [Sec. 6 (b)] it was provided that 200,000 long tons, or 448,000,000 pounds of coconut oil be admitted into the United States free of duty for a period of ten years after the date of the inauguration of the new Philippine Government. An excise tax of 3 cents a pound on the first processing of Philippine coconut oil could, therefore, be reasonably anticipated to yield a revenue of not less than $13,430,000 per annum. From July 1, 1934, the effective date of the Revenue Act, to January 31, 1937, a period of thirty-one months, it actually yielded $44,336,506.19.[1] It is understood that the amount collected thereunder now approximates or exceeds $50,000,000, all of which is still being held in the separate fund provided for by the Act, and none of which has been paid over to the Philippine Government, pending the decision of this and similar cases.

As a result of the Independence Act, the Philippines are no longer a possession of the United States. While their independence does not become complete for a period of ten years, and while in the interim certain rights of sovereignty are reserved to or conferred upon the United States, the United States is without right or power during such period

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[1]These figures are taken from the Annual Reports of the Commissioner of Internal Revenue for the fiscal years ended June 30, 1935 (pp. 68-69) and June 30, 1936 (p. 22), as supplemented by Form 22, "Abstract of the United States Internal Revenue Collections" for the month of January 1937.

to prescribe a form of government for the Philippines, or to define its duties or powers, and has expressly granted to the Government of the Commonwealth of the Philippine Islands "all * * * rights which may have been acquired in the Philippine Islands by the United States under the treaties" with Spain of December 10, 1898 and November 7, 1900 (Point I, page 14 *et seq., post*).

The effect of the Act is to make a gift to the Government of the Commonwealth of the Philippine Islands of all the proceeds of the tax imposed, to be used by it for any purpose that it sees fit, provided only that if it pays a bounty to the producers of coconut oil in the Philippines, no further payment of the proceeds of such tax shall be made to it. Among the reasons pressed upon Congress for passage of the Independence Act was the fact that the Philippine people had demonstrated over a period of years their capacity to sustain a self-supporting government, and it was the clear intent of that Act that the Philippines should be financially independent of the United States (Point II, page 22 *et seq., post*). The accumulations under this tax are now, within a short space of less than three years, almost sufficient, when added to the sinking fund accumulated at the time of the passage of the Independence Act, to pay off the entire public debt of the Philippine Islands (see page 40, *post*).

Since before 1909 it has been the policy of the United States to require the Philippine Government to be supported out of revenues collected within the islands themselves. The successful accomplishment of this policy is attested by the facts laid before Congress at the time of the passage of the Independence Act. It cannot be contended that the imposition of this tax, within the United States, and the devotion

of its proceeds to the use of the Philippine Government was necessary to prevent breakdown of government in the Philippines, or to enable that government to carry on its functions, or in aid of the execution by the United States of the powers reserved to it by the Independence Act. Such contention, if made, would be contrary to the facts known to Congress at the time of the passage both of the Independence Act and of the Revenue Act of 1934 (Point III, page ***29, et seq., post***).

The first question that arises, therefore, is whether an excise tax levied within the United States, all the proceeds of which are required to be "held as a separate fund and paid to the Treasury of the Philippine Islands" is a tax levied "to pay the debts" or to "provide for the common defense and general welfare of the United States".

I

SINCE THE PHILIPPINES ARE NO LONGER A POSSESSION OF THE UNITED STATES, AND THE UNITED STATES NO LONGER IS UNDER ANY DUTY, NOR HAS IT THE RIGHT TO PRESCRIBE A GOVERNMENT THEREFOR, OR TO DEFINE ITS POWERS AND DUTIES, EXPENDITURES BY THE UNITED STATES THEREIN CANNOT BE JUSTIFIED ON PROPRIETARY GROUNDS.

The Philippines never were a part of the United States, but a possession of it (*Downes* v. *Bidwell*, 182 U. S. 244, 286, *The Case of the Fourteen Diamond Rings*, 183 U. S. 176, 180, *Dorr* v. *United States*, 195 U. S. 138, *Balzac* v. *Porto Rico*, 258 U. S. 298). As a result of the passage of the Independence Act, they are no longer a possession.

Unlike Alaska and Hawaii, the Philippines have never been incorporated into the United States even as a territory, From the beginning it has been the purpose of the United States ultimately to give to the Islands their independence. This purpose was reiterated and officially declared in the preamble of the Jones Act, by which substantial autonomy was conferred upon the people of the Philippine Islands.[1]

The Philippine Independence Act, appendix, page iv, is entitled:

> "An Act to provide for the complete independence of the Philippine Islands, to provide for the adoption of a Constitution, and a form of government for the Philippine Islands, and for other purposes."

Section 1 of the Act empowers the Philippine Legislature to convene a Constitutional Convention within the Islands

> "to formulate and draft a Constitution for the Government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, *which shall exercise jurisdiction over all the territory ceded to the United States* by the Treaty of Peace concluded between the United States and Spain on the 10th day of December, 1898. * * *

Section 2 (a) provides that the Constitution shall be Republican in form, shall contain a bill of rights, and re-

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[1]"Whereas it is, as it has always been, the purpose of the people of the United States to withdraw their sovereignty over the Philippine Islands and to recognize their independence as soon as a stable government can be established therein * * *". Act of August 29, 1916 (U. S. C. A., Title 48, Secs. 1001 *et seq.*; 39 Stat. 545).

serves to the United States the exercise of certain powers for a period of ten years, to be conferred upon it through embodiment in the Constitution of the Commonwealth. Through the adoption of that Constitution, these powers derive their present force therefrom.

While the Government of the Islands will not become fully sovereign for a period of ten years, and while during this period the United States has been empowered to exercise certain rights of sovereignty thereover, the powers reposed in the United States do not include the power to prescribe a form of government for the Philippines during the ten-year period, or thereafter, or to define the duties and powers of such government. Section 7 (1) of the Independence Act confers upon the President a veto power over all amendments to the Constitution adopted during the ten year period. No power is reserved in or conferred upon the President or upon Congress itself to initiate amendments or to impose upon the Islands any form of government other than that contained in the Constitution, adopted by them or as subsequently amended by them.

Section 10 (a)[2] provides that at the expiration of the ten-year period the President "*shall* by proclamation with-

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[2]**Section 10 (a) reads as follows:**

> **"on the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over**

draw" all rights and sovereignty then being exercised by the United States and "*shall* recognize" full and complete independence of the islands "under the constitution then in force". No right to impose any condition whatsoever upon the Philippine Islands as a condition precedent to the execution of this duty is reserved. The United States has therefore irrevocably granted to the people of the United States their independence, although its Government does not become possessed of all of the attributes of sovereignty for a period of ten years.

Finally, Section 5 of the Independence Act provides that:

> "All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, *are hereby granted* to the government of the Commonwealth of the Philippine Islands when constituted." (Emphasis ours.)

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the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force."

By this section the United States ceded or granted to the Government of the Commonwealth all rights in the Islands acquired from Spain, subject to be defeated only by failure of the People of the Islands to adopt a Constitution of their own and set up a government thereunder. The Independence Act was approved March 24, 1934, and was accepted by the Philippine Legislature on May 1, 1934, House Document No. 400, 74th Cong., 2d Sess., page 1. On February 8, 1935 the Constitutional Convention framed a Constitution certified by the President to conform to the requirements of the Independence Act. *Ibid.*, pages 5-24. On March 23, 1935, the President approved this Constitution (World Almanac, 1937, page 568), and it was adopted by the People of the Philippines on May 14, 1935. House Document, No. 400, 74th Cong., 2d Sess., pages 24, 30. Elections required to be held thereunder were held on September 15, 1935 (New York Times, Sept. 17, 1935, page 15:4), and the establishment of the Government of the Commonwealth proclaimed by the President on November 15, 1935. House Document, No. 400, 74th Cong., 2d Sess., page 73.

To all intents and purposes the Philippines, therefore, ceased to be a possession of the United States upon the enactment of the Independence Act and its acceptance by the Philippine Legislature, although formal transfer of governmental powers from the Philippine Government, as set up by the Jones Act, to that of the Commonwealth did not take place until later. Every act done in the Islands or by the United States, including the passage of the Revenue Act of 1934, was done in anticipation of such transfer.

The United States is no longer possessed of any power to impose upon the people of the Philippines a form of gov-

ernment, or to change that which they have provided for themselves in their own constitution, or to exercise generally the powers of government therein. *Its interest is no longer that of a proprietor but of a guardian.*

The principal powers conferred upon the United States for a period of ten years by the Philippine Constitution, pursuant to the requirements of the Independence Act, are:

(1) Control over foreign relations [Sec. 2(a), (10)];

(2) The right to maintain military reservations and armed forces, and to call into the service of the United States all military forces organized by the Philippine Government [Sec. 2, (a), (12)], accompanied by provision that all citizens of the Philippines during such period shall owe allegiance to the United States, and that every officer of the Philippine Government shall take an oath to maintain true faith and allegiance thereto [Sec. 2(a), (1) and (2)];

(3) The right to intervene when necessary for preservation of the Government, or to insure the discharge of its obligations "in accordance with the provisions of the Constitution" [Sec. 2(a), (14)];

(4) A limited veto and supervisory power over the fiscal operations of the Government [Sec. 2(a), (6) and (9), Sec. 7 (4), Sec. 2(a), (14)—the provision conferring the right to intervene hereinbefore noted—and Sec. 7 (2)], all to be read, however, in connection with Sections 2(a), (7) and Sections 2(b), (3) and (5), and Section 9, by which all existing liabilities of the preexisting government are to be assumed by the new Government, both during the ten-year period and upon its expiration, and any ob-

ligation of the United States therefor is expressly disclaimed.

In respect of the provisions relating to the fiscal operations of the Philippine Government, which would appear to be those most directly connected with the question at issue, it is enough at this point to say that they clearly contemplate that the Philippine Government should be financially independent of the United States and self-supporting (see Point II, page 22 *et seq., post*).

Provisions, in addition to those already noted [other than that providing for review by this Court of cases from the Philippine Islands, Sec. 2(a), (13), Sec. 7(6), and that conferring a veto power over acts affecting immigration, contained in Sec. 2(a), (9)], relate to the property rights of the United States and its nationals [Sec. 2(a), (4), 2(b), (1)], to the civil rights of the latter [Sec. 2(a), (16)], to the rights of citizens or inhabitants of the Philippine Islands under the immigration laws of the United States (Sec. 8), to trade relations between the two countries [Sec. 2(a), (5), Sec. 6], or provide for religious toleration [Sec. 2(a), (3)] and for the maintenance of an adequate system of public schools primarily conducted in the English language [Sec. 2(a), (8)]. These all relate to the rights and privileges of the United States and its nationals, to trade relations and to other matters which might well be appropriately included in a treaty between two independent nations, and are in no wise inconsistent with complete sovereignty.

The other sections, previously referred to, obviously constitute limitations upon the exercise of complete sovereignty by the Government of the Islands for a period of ten years and authorize the exercise by the United States of certain

powers. The relation created, however, would appear to be that of guardianship. Certainly the status of the United States is no longer that of a proprietor. In respect of conduct of all local matters, the Philippine Islands are completely autonomous. Neither the President nor Congress is empowered to veto any law relating to the internal affairs of the Philippines except in a limited way in respect of its fiscal operations. In respect of these it has no right to initiate or impose taxes of any description, while its veto power is limited to those on imports and exports.

We think it unimportant to determine exactly what the status of the Philippine Islands at the present time is. It is perhaps unlike that of any other people in the world today, but whatever it is, the following conclusions would appear to be incapable of refutation:

(1) That the Islands are no longer a possession of the United States, and that the interest of the United States therein is no longer proprietary:

(2) That the United States is no longer under the obligation, nor has it the power to prescribe a form of government for the Islands, to define its powers, or the manner of their exercise, or to interfere generally in its internal affairs, but only in a limited way, and then primarily in respect of matters directly or indirectly affecting its external relations or fiscal operations; and

(3) That, as to the latter, it was the intent of the Act and of the Constitution adopted thereunder that the Philippine Government should be financially independent of the United States and self-supporting, although providing for a limited degree of guardianship in the United States.

II

THE DEMONSTRATED CAPACITY OF THE PHILIPPINE PEOPLE TO SUSTAIN A SELF-SUPPORTING GOVERNMENT WAS ONE OF THE MAIN REASONS PRESSED UPON CONGRESS FOR THE ENACTMENT OF THE PHILIPPINE INDEPENDENCE ACT, AND IT WAS THE CLEAR INTENT OF THAT ACT THAT THE PHILIPPINE GOVERNMENT SHOULD BE FINANCIALLY INDEPENDENT OF THE UNITED STATES. BY THE TERMS OF THE ACT ITSELF, THE UNITED STATES EXPRESSLY DISCLAIMED ANY RESPONSIBILITY FOR THE THEN EXISTING OR FUTURE DEBTS OF THE PHILIPPINE GOVERNMENT.

It appears to have been the policy of the United States from an early date that the Government of the Philippines should be self-supporting. In its report to the Secretary of War for the year ended June 30, 1909, the Philippine Commission, under the heading of "Recommendations," said:

> "The Commission believes that the expenses incurred in connection with the regular civil functions of the Philippine government should be paid for from its receipts and is satisfied to carry on the work of the government without direct appropriation from the National Treasury, but in case Congress is disposed to help the Philippine Islands in the matter of education and push the work faster than the insular treasury can stand, we shall be glad to see a considerable annual appropriation made for education from the National Treasury. An additional amount of $2,000,000 annually could be spent with great advantage to the islands.

> "*All the work of the insular government is now being performed with insular funds, the Philippine government being strictly self-supporting,* the only assistance received from the United States being the payment of an amount which comes to about two-thirds of the annual cost of coast surveys. These coast surveys are being carried on more rapidly than the civil government would do were it not for their military importance, which justifies the performance of part of this work with funds of the United States." Report of Governor-General (1909) pages 48-49. (Emphasis ours.)

We are not advised to what extent Congress adopted the recommendation of special appropriations for educational purposes, or for how long it continued to make appropriations for the coast surveys. A search of the Appropriation Acts since the passage of the Jones Act in 1916, however, discloses that between 1916 and the passage of the Independence Act in 1934, *no* money whatsoever was appropriated by Congress out of the Federal Treasury for the support of the Philippine Government.[1] It was therefore not

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[1]We have been furnished with an advance proof of the government's brief in the companion case of *Cincinnati Soap Company* v. *United States* (No. 659). In footnotes 32 through 40, at pages 44 and 45 of this brief, a number of Congressional Acts are cited which it is claimed indicate that Congress has spent large sums of money in the Philippine Islands, for the government of the Islands, for public works, public health, agriculture, education, postal service, the taking of a census, assistance to the native military and relief of disasters.

An examination of the statements made by the Government in these footnotes and of the Congressional Acts themselves discloses in the first place that with two exceptions the amounts appropriated have been inconsequential when compared to the annual expenditures of the Philippine Government which now aggregate approximately 75,000,000

only the policy and aim of the United States for twenty-five years prior to the Independence Act to make the Philippine

pesos ($37,500,000) (Moody's Governments, 1937, p. 93). One of the two exceptions is the Act of March 3, 1903, cited in notes 32 and 40 appropriating $3,000,000 for the relief of distress in the Philippine Islands. This, of course, was during the military occupation of the Islands by the United States immediately after their cession by Spain. This appropriation was doubtless for the purpose of meeting the emergency situation created by the Philippine insurrection. The other appropriation, large enough to be seriously considered, is mentioned in footnote 34 and consisted of rental and benefit payments made to sugar producers in the Islands under the Sugar Quota Act, which was part of the AAA scheme. This, of course, has no bearing upon our situation.

The statement made in the Government's brief at the bottom of page 44 to the effect that large appropriations have been made for the government of the Philippine Islands is not supported in any way by the statutes it cites. The Act of June 8, 1898, and the Act of February 14, 1902, cited in note 32 were for purely military expenditures during the time of military occupation by the United States. The very small expenditures provided for in the remaining statutes were in connection with such purely incidental matters as (1) agricultural research involving an expenditure of only about $2,000 a year, and obviously intended to benefit the United States; (2) the removal of lepers from one American colony to another (Guam); (3) aid to Filipino soldiers who had been in the United States Army, or who desired to enter West Point; (4) the taking of a census, doubtless for our own guidance; and (5) extension to the Philippine Islands of the United States postal service. It does not appear from the annual report of the Governor-General (1935), cited in note 33 to the effect that the United States Army constructed 13 water systems in the Philippine Islands, that the United States paid for these systems. Even if they did, they are of minor consequence.

Instead of controverting our contention that the Philippine Islands have been self-supporting at least for the last 25 years, the unimposing total of these instances developed by assiduous research on the part of the Government clearly proves the contrary. It is moreover to be noted that in each and every instance, in direct contradistinction to our situation, the appropriation is made for definite and specific purposes.

Government self-supporting, but that policy had been successfully carried into effect.

That the Philippines had proved their ability to be self-sustaining financially was one of the main considerations pressed upon Congress by the Committee reports recommending bills providing for their independence. The Independence Act of March 24, 1934 was preceded by the Hare-Hawes-Cutting Act. In the Senate Report on the Hare-Hawes-Cutting Act (Senate Report 781, 71st Cong., Second Session), recommending its passage there appears the following statement:

> "*The Philippine government has been self-supporting since the establishment of civil government in the islands.* The only expenses incurred by the American Government are those in connection with the United States Army stationed in the Philippines. The Philippine government has been and is in a sound financial condition. Its income is in excess of its expenditures for the present necessary activities of the island government." (p. 14.) (Emphasis ours.)

The Philippine Legislature refused to accept this bill. The Independence Act of 1934 was thereafter introduced in the Seventy-third Congress as H. R. 8573. In presenting this bill to the House, Mr. McDuffie in charge of the bill said:

> "The bill is substantially a reenactment of the Hare-Hawes-Cutting Act"[2] (Cong. Rec., 73rd Cong., Second Session, Vol. 78, Part 5, p. 4834).

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[2]The following statement by him, fully supported by a comparison of the two acts, indicates the only material difference between them:

> "The only change involved under the terms of this bill, or I should say the major change presented in

In the House report accompanying H. R. 8573—the bill which by its passage became the Independence Act of 1934—the Committee (House Report 968, 73rd Cong., Second Session) said:

> "A careful analysis of the Philippine question and of all the evidence submitted at the hearings held before the Committee discloses the following facts:
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> * * * * * * * * *
>
> "4. Every step taken by the United States since the inception of American sovereignty over the Philippines has been to prepare the Filipino people for independence. *As a result, they are now ready for independence* politically, socially, and *economically* (p. 5).
>
> "At a time of universal depression, when most nations, large and small, are beset with fiscal difficulties, *the government of the Philippines is in a sound financial condition.* This statement is corroborated by the report of the Insular Auditors. From the exhibits left with the Committee *it appears that the Philippines not only have succeeded in balancing their budget but have in fact accumulated a surplus. Even in 1932, and in the face of curtailment of revenues, the Philippine budget will be balanced without increased taxation or abandon-*

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this bill, is that provision in section 10 whereby we agree when independence is accomplished to remove our Army and relinquish the Army reservations. We continue to retain our naval bases and coaling stations, but agree to enter into negotiations with the new independent government to determine the feasibility of further maintenance of our Navy in the islands." (Cong. Rec., 73rd Cong., Second Session, Vol. 78, Part 5, p. 4834.)

ment of essential government services. The budgetary system was adopted in the Philippine Islands before it became operative here.

"It was urged by the proponents of independence in the presentation of their views to the Committee that this wise stewardship of the insular revenues evidences the ability of the Filipinos to manage one of the most difficult departments of government in one of the worst financial dislocations of recent years (p. 12).

"Our purpose in the Philippines has been accomplished. The unity of the people is a fact. Their readiness and their eagerness for self-government have been abundantly demonstrated. *Their financial capacity to support their government is beyond question.* They have a balanced budget, a stable currency, a sound and efficient administration of justice, a successful system of public instruction" (p. 15). (Emphasis ours.)

The clear intent of the Independence Act was that the new Government to be set up thereunder should be likewise self-supporting.

Section 2(a) (7) provides:

"The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government."

Section 9 reads as follows:

"There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and

> municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands; * * *."

Both of these provisions became immediately effective and hence are to be operative throughout the ten-year period.

Section 2(b) (3) provides that the Constitution shall contain the following provision, effective as of the date of ultimate independence:

> "That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands."

Section 2(b) (5) provides that the foregoing provision shall be embodied in a treaty between the Philippine Islands and the United States.

The Act therefore contemplates that the Philippine government shall be financially independent of the United States, both immediately and ultimately, and that the United States shall not be liable for principal or interest of the bonds of the Philippine Government or of its political subdivisions outstanding at the time of the passage of the Independence Act, or which may be issued in the ten-year period

intervening between the setting up of the Government of the Commonwealth and the ultimate independence of the islands.

The public debt of the Islands may not be increased without permission by Congress [Section 2(a)(6)], but all obligation upon the part of the United States on account of any such increased indebtedness is expressly disclaimed (Section 9, *supra*). The Act discloses concern upon the part of the United States that the Philippine Government may not pay the interest and principal upon such debt when due, or meet its obligations. Consequently, certain supervisory powers and rights are conferred upon the United States. Acts affecting currency, coinage, imports and exports require the approval of the President [Section 2(a)(9)],—provisions obviously intended for the double purpose of maintaining a sound financial structure and for control of imports and exports in the interest of American trade; but no power is conferred upon the United States to initiate import or export duties, and none whatever to initiate or veto property or excise taxes or other exactions within the Islands designed to provide the Government with revenues.

Section 6 provides that during the ten-year period import duties shall be collected in the United States on certain products of the Philippines in excess of specified quantities, but does not provide that the proceeds of such import duties shall be paid over to the Philippines. The same section provides that beginning with the sixth year after inauguration of the new Government, export taxes in stated amounts shall be levied upon such articles, the proceeds of which shall be applied solely to the payment of the principal and interest on the bonded indebtedness of the Islands.

If the Philippine government fails to pay any of its bonded indebtedness or the interest thereon when due, or to fulfill any of its contracts, the United States High Commissioner, upon the direction of the President, may take over the customs offices and apply such part of the revenue therefrom as may be necessary to make good such defaults [Section 7(4)]. No obligation, however, is imposed upon the United States to make good such defaults out of its own treasury.

Section 7(2) empowers the President to suspend the taking effect of or the operation of any law, contract or executive order of the government which, in his judgment, will result in the failure of the government to fulfill its financial obligations.

All of these provisions are consistent with financial guardianship, but not with proprietorship. They confer upon the United States or its President a limited veto power over the fiscal operations of the Philippine Government. They do not confer upon the United States any affirmative power to provide in what manner the revenues of that Government shall be raised, or any general control of its expenditures.

Every line and syllable of the Independence Act looks to the immediate and complete financial independence of the Philippines and to the maintenance, in the Islands, of a self-supporting government. Indeed, as we have seen, it has been so for a quarter of a century, even during the period when it was the right and duty of the United States to provide some form of government for the Islands—a right and duty which expired with the Independence Act, or at least with the adoption of the Philippine Constitution.

III

SINCE THE ENTIRE PROCEEDS OF THE TAX ARE REQUIRED TO BE PAID OVER TO THE AUTONOMOUS PHILIPPINE GOVERNMENT TO BE EXPENDED IN ITS UNCONTROLLED DISCRETION, IT IS NOT A CONSTITUTIONAL EXACTION.

1. By providing that the entire proceeds of the tax should be paid over to the Philippine Government, to be expended for any purpose which that Government sees fit, Congress exceeded constitutional limitations, both upon its power to tax and its power to spend.

Article I, Section 8, Clause 1, of the Constitution confers upon Congress the power

> "to lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States".

These words constitute both a grant of power and a limitation upon its exercise. Hamilton, Report on Manufactures, Dec. 5, 1791; Story on the Constitution (5th Ed.), §§ 918-922; *United States* v. *Butler*, 297 U. S. 1. This is so because the United States is a government of limited and enumerated powers. *McCulloch* v. *Maryland*, 4 Wheat. 316; *Kansas* v. *Colorado*, 206 U. S. 46, 81. The limitation applies to the power to spend as well as to the power to tax (*United States* v. *Butler, supra*), although in this case were the contrary true it would be immaterial since the validity of a tax must always depend upon its being levied for a public purpose in the case of a State tax and a national purpose in the case of a Federal tax.

It is true that where expenditure is to be made out of Treasury funds raised by general taxation there would appear to be no effective means of preventing Congressional abuse of the spending power by recourse to the courts. This is not because such an appropriation would be within the constitutional power of Congress, but solely by reason of procedural obstacles. *Massachusetts* v. *Mellon*, 262 U. S. 447, 482. Where, however, the proceeds of the exaction are ear-marked by the statute itself to be devoted to a designated purpose, the Court may and will determine, through a suit by the taxpayer, whether it is a constitutional exaction. *United States* v. *Butler*, 297 U. S. 1.

Even the power to tax to pay the debts of the United States is not an unlimited power. As said by Story:

> "* * * No advocate for the doctrine of a restrictive power will contend, that the power to lay taxes to pay *debts* authorizes the payment of all debts which the United States may choose to incur, whether for national or constitutional objects, or not. The words, 'to pay debts,' are therefore either antecedent debts, or debts to be incurred 'for the common defence and general welfare,' which will justify Congress in incurring any debts for such purposes. * * *" [Story on the Constitution (5th Ed.), Vol 1, § 921.]

In respect of the power to tax and spend to provide for the general welfare, Hamilton, in his Report on Manufactures, *supra*, said:

> "The only qualification of the generality of the phrase in question, which seems to be admissible, is this: That the object to which an appropriation of money is to be made be general, and not local; its

> operation extending in fact or by *possibility* throughout the Union, and not being confined to a particular spot." [Emphasis ours.]

Unlike the exaction in the *Butler* case, thought by the dissenting Justices to be valid, there is no "possibility" that the operation of the objects, for which the revenue to be derived from this tax may be spent, may extend "throughout the Union". This circumstance alone distinguishes this exaction from any other which might be levied by Congress to provide for the general welfare by its appropriation to particular uses throughout the Union.

Story, an adherent of the Hamiltonian construction of this clause, and whose reading of it was adopted by a majority of the Court in *United States* v. *Butler, supra,* and apparently concurred in by the minority, says:

> "A power to lay taxes for any purposes whatsoever is a general power; a power to lay taxes for certain specified purposes is a limited power. A power to lay taxes for the common defence and general welfare of the United States is not in common sense a general power. It is limited to those objects. It cannot constitutionally transcend them. If the defence proposed by a tax be not the common defence of the United States, if the welfare be not general, but special, or local, as contradistinguished from national, it is not within the scope of the Constitution. If the tax be not proposed for the common defence, or general welfare, but for other objects, wholly extraneous (as, for instance, for propagating Mahometanism among the Turks, or giving aids and subsidies to a foreign nation, to build palaces for its kings, or erect monuments to its heroes), it would be wholly indefensible upon constitutional principles. The power, then, is, under

> such circumstances, necessarily a qualified power." [Story on the Constitution (5th Ed.), Vol. 1, § 922.]

All the proceeds of the tax are to be paid over to the Philippine Government to be used for any purpose for which it sees fit. They may be devoted to the purpose of constructing railroads, building good roads, construction of water works, electric light plants or other internal improvements, to pay the expenses of administering that Government itself, to pay off its bonded indebtedness (for which the United States has expressly disclaimed any responsibility), to pay bounties to the growers of sugar to be brought into the United States in competition with cane and beet sugar grown in this country, or for any other special or local purpose to which the Philippine Legislature in its wisdom sees fit to apply them. Unless it be held that any expenditure of money in the Philippines is for the general welfare of the United States, it is plain that this bulk appropriation of the proceeds of the tax to the Philippine Government to do with as it pleases transcends the constitutional limitations of both the power to tax and the power to spend.

No such illimitable power to tax and spend for any purpose thought by Congress to be conducive to the national interest exists in respect of the exercise of the power to tax and spend within the United States itself. The argument that the phrase "general welfare"

> "should be liberally construed to cover everything conducive to national welfare"

and

> "that decision as to what will promote such welfare rests with Congress alone, and the courts may not review its determination"

was expressly rejected in *United States* v. *Butler, supra,* pages 64-65. Nor is there anything in the dissenting opinion to the contrary. On the contrary, that opinion, like the opinion of the majority, analyzes and reviews the nature and purpose of the tax and the resulting appropriation and is based upon the conclusion that the appropriation under attack was, in fact, for the general welfare of the United States within the meaning of the Constitution.

Although those objects of expenditure, which may be sustained under the general welfare clause, will doubtless vary with changes in conditions and will be affected from time to time by growth and change in our national life, the power is not unlimited, else the Government would cease to be one of enumerated powers. The bulk appropriation of the entire proceeds of this tax to the Philippine Government to be used by it for any purpose which it sees fit is, therefore, an appropriation beyond the scope of the spending power. As said by Story:

> "* * * Money cannot be applied to the general welfare, otherwise than by an application of it to some particular measure, conducive to the general welfare. Whenever, therefore, money has been raised by the general authority, and is to be applied to a particular measure, a question arises, whether the particular measure be within the enumerated authorities vested in the Congress. If it be, the money requisite for it may be applied to it; if it be not, no such application can be made. This fair and obvious interpretation coincides with, and is enforced by, the clause in the Constitution, which declares that no money shall be drawn from the treasury but in consequence of appropriations by law. *An appropriation of money to the general welfare would be deemed rather a mockery than an observ-*

> *ance of this constitutional injunction."* [Story on the Constitution (5th Ed.), Vol. 1, § 918.] [Emphasis ours.]

How much more certain is it that this is true when the appropriation is in general to the autonomous Philippine Government and not even required to be spent for its general welfare, much less that of the United States.

The proceeds of this exaction are not required to be used for any particular purpose or purposes, but may be used for any purpose whatsoever.[1] It is therefore unnecessary to determine under what circumstances and to what extent the proceeds of a tax levied in the United States may be earmarked for expenditure in the Philippine Islands when required to be devoted to specific purposes upon the ground that such specific purposes are for the general welfare of the United States.[2] In view of the status created

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[1]The Philippine Legislature is not even required to apply these moneys to public as distinguished from private purposes. Of course, no tax is valid which is levied for private as distinguished from public purposes. *Citizens Savings & Loan Association* v. *Topeka*, 20 Wallace 655; *Parkersburg* v. *Brown*, 106 U. S. 487; and *Cole* v. *La Grange*, 113 U. S. 1.

[2]In the advance proof of the government's brief in No. 659 (pp. 29-30) the Government refers to special purpose taxes levied by the British Parliament "for the purpose of carrying on a war", for the purpose of "defraying the expenses of the household", or of maintaining the civil lists, and for poor rates, church rates, sewer rates, lighting and watching rates. It also refers to the levy of special purpose taxes in this country "for roads, for schools, and the like". In a footnote (p. 30) it lists a number of special purpose taxes previously levied by Congress. Their very description discloses that in each case the purpose for which the proceeds were required to be used was to pay the debts, or to provide for the common defense or general welfare of the United States, as, for example, payment of the public debt, protec-

by the Independence Act, we question the power of Congress to levy any such tax. But neither before nor after the status created by that Act may an exaction—all the proceeds of which are to go in bulk to the Philippine Government to be expended as it chooses—be sustained as a tax levied to provide for the common defense and general welfare of the United States.

2. This exaction has not been levied to enable the United States to perform any of its obligations or duties under the Philippine Independence Act.

The exaction cannot be defended as one levied in aid of the execution of the powers reserved to the United States under the Philippine Independence Act. Nor is the nature of those reserved powers such as to justify such an exaction even if the use of the proceeds were limited to such purpose. By the Philippine Independence Act the United States may continue to maintain military and naval bases in the Islands and to appropriate property for that purpose. This exaction is not levied for the support of the military and naval forces or establishments of the United States in the Philippine Islands. If so, it might perhaps be defended as a tax levied to provide for the common defense of the United States, but, if so, its proceeds would be required to be paid into the United States Treasury, not into that of the Philippine Government. If it be conceivable that they could be required to be paid into the latter, in view

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tion of the frontiers of the United States, etc. The tax in question, all of whose proceeds are to be paid over to the Philippine Government, to be done with as it pleases, bears no resemblance to the special purpose taxes to which the Government refers in this part of its brief.

of that Government's autonomous status, a restriction would certainly be necessary to require the funds to be held by the Philippine Government for the use of the United States instead of for the use of the Philippine Government at its pleasure.

By the Independence Act, control of the foreign relations of the Philippine Islands is reserved to the United States. The proceeds of this exaction are not limited to the execution of this power, and manifestly the application to this purpose of the $50,000,000 in revenue which has accrued in three years would be wholly fanciful. Power is also reserved in the United States to intervene in the Philippine Islands in the event that the Philippine Government fails to maintain law and order and carry on its functions. Expenditures incurred in the exercise of this reserved power would be the expenditures of the United States, not of the Philippine Government. Nor are the proceeds required to be held by the Philippine Government to reimburse the United States for any such expenditures that it may incur in the future. Neither can there be any possible basis for any contention that there would be a breakdown in the administration of the Philippine Government unless put in possession of the funds to be raised by this exaction. Conditions in the Philippine Islands, as disclosed by reports accompanying the submission of the Independence Bill to Congress, as well as known conditions in the Philippine Islands at this time, negative any such pretense.

The remaining—and, in many respects, the principal—power reserved to the United States by the Philippine Independence Act is a limited veto power over the fiscal operations of that government for the sole purpose of seeing that it pays the principal and interest on its bonded indebt-

edness as they become due, together with the power to take possession of the customs offices and devote customs revenues to the curing of any default in such obligations. As we have already pointed out, the United States has not assumed—but expressly disclaims—any liability of its own in respect of such payments. The history of the times and the Committee reports accompanying the Philippine Independence Act completely negative the suggestion that the proceeds of this tax are required by the Philippine Government in order to meet its financial obligations.

But let us assume that, instead of providing that the entire proceeds of the tax should be paid over to the Philippine Government to be used for any purpose for which it sees fit, they were required to be used solely for the purpose of paying the principal and interest on the funded debt of the Philippines themselves. Such a use would clearly be bad. However much it might be to the interest of the United States to see such debt paid, a tax levied for this purpose would not be one to pay the debts or provide for the general welfare of the United States. As we have seen, the power to tax and spend for the purpose of paying debts of the United States is not a power unlimited in scope, but is limited to a power to tax and spend for the purpose of paying debts already accrued or subsequently incurred to provide for the common defense and general welfare of the United States itself. A tax levied to pay the debts of the Philippine Government does not fall within the limits of such power.

Although the proceeds of the exaction were indeterminate in amount at the time of the passage of the Revenue Act of 1934, it was reasonably to be anticipated that it would be productive of a revenue approximating not less

than $14,000,000 per year. This is so because by the Independence Bill, 488,000,000 pounds of coconut oil are to be admitted free of duty into this country. The tax became effective July 1, 1934. Between that date and January 31, 1937, $44,336,506.19 has been collected thereunder, and it is understood that today the collections amount to $50,000,000. Mr. McDuffie, in charge of the Philippine Independence Bill in the House, in presenting such Bill thereto stated that at the date of its submission (March 19, 1934), the bonded indebtedness of the Philippine Islands was 170,000,000 pesos[3], against which there was a sinking fund of 50,000,000 pesos then on deposit in American banks (Congressional Record, 73rd Cong., 2nd Sess., Vol. 78, Part 5, p. 4835). The taxes already accumulated under the Act in dispute are therefore more than sufficient today, when added to sinking fund accumulations, to pay off the entire bonded indebtedness of the Philippine Islands. Had they been earmarked for this purpose the tax would have been clearly bad. Yet, upon their receipt by the Philippine Government, it may, if it chooses, pay off its entire bonded indebtedness through the receipts derived from this tax levied upon citizens of the United States. This circumstance was known to Congress at the time but no restriction against such use was provided.

A tax levied for the support of a State government would not be one to provide for the common defense or general welfare of the United States (*Passenger* cases, 7 Howard 446), even assuming that Congress may appropriate money for the use of the States for specific purposes, which,

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[3]The peso's value is 50 cents. Since Mr. McDuffie stated that $65,000,000 was the equivalent of 170,000,000 pesos, that figure is probably in error and intended to be 130,000,000 pesos. In this event the debt would be $40,000,000. At the most it would be $60,000,000.

had the money been expended directly by the Federal Government, would fall within the general welfare. Under the Independence Act, the Philippines are as fully autonomous as are the States of the Union, and an appropriation for the general support of that Government would seem to be equally bad.

3. This exaction may not be supported upon the theory that it was necessary to prevent the breakdown of orderly government in the Philippine Islands.

It may be admitted that after, as well as before, the passage of the Independence Act, the United States has an interest in seeing that orderly government is maintained in the Philippines. This tax, however, may not be supported upon the theory that it is necessary to prevent the breakdown of such government. Reference has already been made to the Committee Reports before Congress at the time of the passage of the Independence Act (pp. 24-26, *ante*). These reports showed that the Philippine Government was in a sound financial condition, fully capable of supporting itself, and as said in the Senate Report on the Hare-Hawes-Cutting Act, such government had been "self-supporting since the establishment of civil government in the Island". As pointed out in these reports, the United States had not contributed to the expenses of the Philippine Government for a quarter of a century. Its policy had been to make the Islands self-supporting, and that policy had been successfully pursued.

Before the passage of the Independence Act it was the duty of the United States to provide a government for the Philippine Islands. Even then the power of Congress to levy a tax upon the people of the United States, anticipated to yield approximately $14,000,000 per annum, all the pro-

ceeds of which were to go to the Philippine Government, irrespective of its necessities, was, to say the least, doubtful. In this connection the following word of warning in *Binns* v. *United States,* 194 U. S. 486, as to the power of Congress to raise revenue in a territory for the benefit of the United States, as distinguished from the power to raise revenue for the support of the territorial government, is not without significance:

> "In order to avoid any misapprehension we may add that this opinion must not be extended to any case, if one should arise, in which it is apparent that Congress is, by some special system of license taxes, seeking to obtain from a Territory of the United States revenue for the benefit of the nation as distinguished from that necessary for the support of the territorial government." (p. 496.)

There is nothing in the legislative history of the Revenue Act of 1934 to indicate any intention by Congress to depart from the settled policy of a quarter of a century to make the Philippine Government support itself. Nor is there anything in the legislative history of the Revenue Act of 1934 to suggest the existence of any such crisis or situation in the Philippines as would require the levy of a special purpose excise tax in this country, all of the proceeds of which should be held for and paid over to the Philippine Government. On the contrary, its legislative history discloses that the whole purpose of the tax was something entirely different, viz., to aid domestic producers of animal and vegetable oils and fats. The amendment providing for the payment of proceeds of the tax to the Philippine Government was offered by Senator Norris on the floor of the Senate. In presenting it no reference was made to the needs

or requirements of the Philippine Government. Nor is such a reference to be found anywhere in the course of the debate. The information contained in the reports accompanying the Philippine Independence Bill conclusively negatives the existence of any necessity for financial aid.

The effect of the provision is to make a gift to the Philippine Government of the entire proceeds of the tax, to be used for any purpose for which that government sees fit, save only for the payment of bounties to the producers of coconut oil or the growers of copra. A tax having such a purpose is not a tax to pay the debts or provide for the common defense and general welfare of the United States.

4. The exaction may not be justified as intended to carry out any moral obligation of the United States to the Philippine Government.

It is claimed that the provision for the payment of the proceeds of this exaction to the Government of the Commonwealth of the Philippine Islands, these proceeds now amounting to at least $50,000,000, can be justified on the ground of a moral obligation, citing *United States* v. *Realty Company,* 163 U. S. 427. The situation in that case, however, was vastly different from ours. In the Tariff Act of 1890 Congress had provided for certain bounties to domestic sugar producers. These producers had been required to take out licenses and in the applications therefor to estimate the amount of sugar to be produced in the current year, to which estimates their production plans had of course to be adjusted. It was also necessary for the producers to give a bond for faithful observance of the rules and regulations to be prescribed by the Commissioner of Internal Revenue for the manufacture and

production of sugar. During several years large sums of money were paid to sugar manufacturers, all manufacturers continued to manufacture in reliance upon the Act's provisions, and no officer of the Government questioned the validity of the Act. In preparing for the sugar season commencing in the fall of 1894, sugar manufacturers had to plan without knowing whether the bounty provisions of the Tariff Act of 1890 would be held valid, they having been attacked in the case of *Field* v. *Clark*, 143 U. S. 649, in which case, however, the court declined to decide the question. In *United States ex rel. Miles, etc.* v. *Carlisle*, 5 D. C. App. 138, the Court of Appeals for the District of Columbia held the sugar bounty portions of the Tariff Act of 1890 unconstitutional. Congress then passed an act granting bounties to the producers of sugar who had complied with the provisions of the Tariff Act of 1890, which bounties were attacked in the *Realty Company* case. This Court held, without deciding as to the constitutionality of the original Act, that Congress was justified in paying these bounties on the ground that the sugar producers had an equitable, meritorious and moral claim irrespective of whether they had a strictly legal claim.

In our case, however, no moneys were appropriated to the Philippine Government because of any equitable, meritorious or moral claim. If the statute, as originally proposed, which levied a processing tax upon coconut oil of Philippine origin, had been passed, it may be that the United States would have adopted a technical method of evading the provisions of the Philippine Independence Act agreeing not to levy an import tax on the first 200,000 long tons of coconut oil imported from the Philippine Islands. It is doubtless arguable that this action would also have con-

stituted a breach of a moral obligation, *not however, with respect to the Philippine Government but with respect to the producers of coconut oil in the Philippine Islands.* When in the Act as passed it is provided that the proceeds of the exaction are to be paid to the Philippine Government under such conditions as effectively to prevent reparation of the injury to producers of coconut oil in the Philippine Islands, it is somewhat ironical to claim that the statute provides for the payment of a moral obligation. Obviously, the statute is a device to prevent the moral obligation, if there be one, from being carried out. The Government's argument that Congress was entitled in this manner to repair alleged economic dislocations in the Philippine Islands resulting from the taxing part of the statute is to be answered in the same way because it is the same argument. By "economic dislocations" must be meant the injury to producers of Philippine coconut oil.

5. This payment to the Philippine Government cannot be justified as the performance of an international obligation of a political nature.

There is nothing in *Luther* v. *Borden*, 7 How. 1; *Terlinden* v. *Ames*, 184 U. S. 270; or *Mountain Timber* v. *United States*, 243 U. S. 219, 234, which in any way assists the Government in its contention that a bulk contribution of this kind could be made even to a foreign government. The proceeds of this exaction are not being employed in the regulation of the foreign relations of the United States or in carrying out its treaty or other obligations connected with the management of its foreign affairs. They are being gratuitously transferred to an autonomous foreign government without respect to any specific obligations of the

United States and for reasons unconnected therewith but connected only with the desire to benefit and regulate domestic interests within the several states. There is no political problem or obligation involved. If the situation could be conceived to be otherwise, then the argument is that Congress can create a political problem by a tax and in the same breath repair it by provisions with respect to the spending of the proceeds.

IV

THE TURNING OVER IN BULK OF THE ENTIRE PROCEEDS OF THIS EXACTION TO THE PHILIPPINE GOVERNMENT TO SPEND AS IT MAY PLEASE IS AN UNCONSTITUTIONAL DELEGATION OF LEGISLATIVE POWER OR A VIOLATION OF THE APPROPRIATION CLAUSE OF THE CONSTITUTION OR BOTH.

The power of Congress to appropriate and spend public funds is limited to expenditures to pay the debts and to provide for the common defense or general welfare of the United States. While the determination of Congress that a particular expenditure is for one of these purposes is not, of course, conclusive and may properly be examined by this Court, the appropriation by Congress of the entire proceeds of this exaction to the autonomous Philippine Government for its indiscriminate use needs no such examination as it is so palpably an abuse of the spending power that it must obviously fall. There is not involved the necessity of determining the frequently very difficult question of whether an expenditure immediately special and local in its nature is sufficiently general in its effect to constitute an expenditure in the national welfare.

The spending power of Congress being definitely limited by the Constitution, it is plain that it cannot delegate to others an unlimited undefined power to spend, even if it should happen that the expenditures actually made by the delegate could be upheld as being in the general welfare of the United States or for one of the other allowable national purposes. Constitutional limitations cannot be evaded by resort to complete abdication. This would, of course, be true even if the delegate were properly selected, as, for instance, the President of the United States or the Secretary of the Interior, or perhaps one of the States of the United States. With such delegates as the last-mentioned, it may be that by setting up adequately definite standards or criteria and laying down adequately definite policies to confine the exercise of the delegated spending power within its proper channels, to wit, to pay the debts and provide for the common defense and general welfare of the United States, a constitutional delegation could be made. But delegation to an outside agency such as the Legislature of the autonomous Philippine Government is quite another matter.

What has been said above makes it clearly apparent that there is no necessity for us to argue the frequently difficult question with respect to the adequacy of standards or policies promulgated by Congress. In *Schechter* v. *United States*, 295 U. S. 495, it was argued that adequate standards and policies had been laid down, but this Court disagreed. In *Panama Refining Co.* v. *Ryan*, 293 U. S. 388, one Justice thought that the statute sufficiently canalized the powers granted. Shortly prior to the decision of this Court in the *Schechter* case, the New York Court of Appeals in *Darweger* v. *Staats* (April 26, 1935), 267 N. Y.

290, 196 N. E. 61, held unconstitutional the so-called State Recovery Act for New York. This Act attempted to make the standards of fair competition within the State of New York uniform with those promulgated under the Code system of the National Industrial Recovery Act, it being provided that the mere filing with the Secretary of State of any Federal Code should *per se* make its requirements the standards of fair competition for the particular trade or industry as to transactions intrastate in character, violations thereof to be misdemeanors. The Court of Appeals held that this was abdication of the legislative function to the Federal Government, but the dissenting Judges thought that the attainment of uniformity was a sufficient legislative policy. This situation may well be contrasted with the delegation by Congress of its spending power to the Legislature of the autonomous government of the Philippine Islands, without any possible justification such as the attainment of uniformity in standards of fair competition.

If the requirements for standards and policies in delegating legislative power applies *in any degree* to the spending power, it has not been complied with. Delegation of the spending power has not been considered by this Court, but in *Township of Franklin* v. *Tugwell*, 85 Fed. 2nd 208, the United States Court of Appeals for the District of Columbia held that the mere mention of "housing" in a Congressional statute was insufficient to define standards and policies for executive spending. In our case the standards and policies provided are not merely insufficient, but are totally non-existent. For another case invalidating a delegation of spending power despite the existence of some standards and policies in the statute, see *Smithberger* v.

Banning (Neb., 1935), 262 N. W. 492. What Congress has done in our case does not even have any justification. What Mr. Justice Stone referred to in his dissenting opinion in the *AAA* case (*United States* v. *Butler*, 297 U. S. 1, at p. 86) as the "great governmental power of the purse" has been handed over lock, stock and barrel to the Government of the Commonwealth of the Philippine Islands, not yet deemed sufficiently competent by Congress to manage its own affairs so as to justify dispensing with the guardianship of the United States, to play with as suits its whim and fancy.

This case is wholly unlike the *Chaco* case (*United States* v. *Curtiss-Wright Export Corp.*, No. 98 October Term 1936, decided December 21, 1936; 57 Sup. Ct. 216). That case dealt entirely with the plenary power of the President of the United States as Chief Executive with respect to foreign relations. It did not deal with the power of Congress to delegate its legislative powers to an instrumentality having no original power in the premises. It held that the Constitution conferred upon the President the sole power to deal with foreign affairs and that it was unnecessary for him to conform to any policies or standards laid down by Congress. Our case is totally different, concerning in no way the powers of the President but only the powers of Congress.

The power to tax and spend is not only limited by Art. I, Sec. 8, Clause I of the Constitution and by the doctrine forbidding delegation of legislative power, which is essential to preserve the separability of the three great departments of government, but Sec. 9, Clause 7 of that Article of the Constitution provides that

> "No monies shall be drawn from the treasury but in consequence of appropriations made by law."

This very important provision of the Constitution has been little discussed by the courts, but the reason for its insertion and its meaning can be gathered from its historical background, from the practical construction accorded to it by Congress and from the opinion of Alexander Hamilton with relation thereto.[1] The clause does not seem to have been considered in any Federal case, but the Supreme Court of Indiana in *Ristine, Auditor of the State of Indiana* v. *Board of Commissioners*, 20 Ind. 328, gave careful consideration to the like clause in the Indiana State Constitution reading:

> "No money shall be drawn from the treasury, but in pursuance to appropriations made by law." (Article X, Section 3.).

At pages 333 through 338 that court discussed the nature of an "appropriation", the evils which are intended to be guarded against by this constitutional provision and the historical background thereof in England. Quoting from Blackstone's Commentaries, Macauley's History of England, Creasy on The English Constitution and Hallam's Constitutional History, the Court clearly demonstrates that this constitutional provision against moneys being drawn from the treasury otherwise than by "appropriations made by law" came down to us as a result of the evils incident to the unlimited spending power enjoyed by the Stuart Kings of England before their discretion was limited by Parliament. It is to be seen from an examination of these

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[1]**An excellent and exhaustive review and analysis of "Early English, Colonial and Congressional Appropriation Acts and Practices", fully bearing out our contention, is contained in Appendix II to Petitioners Reply Brief filed in this Court in *Duke Power Company et al.* v. *Greenwood County et al.* (No. 32, October Term, 1936).**

authorities that the essence of an appropriation is the allocation of specific parts of the public revenue *to specific purposes of government.*[2] It is unnecessary in this case to discuss the question of how specific the designation of purposes must be. That may often be a difficult question, but when no purposes are designated, it is one with which we are not concerned.

The clear evidence of the meaning of the appropriation clause to be found in history is corroborated in the writings of Alexander Hamilton who wrote that the appropriation clause was designed

> "to secure these important ends,—that the *purpose,* the *limit,* and the fund of every expenditure *should be ascertained by a previous law.*" (Italics ours.) [Hamilton's Works (Ham. Ed.), VII, pp. 532, 533.]

Our statute, of course, does not in the least degree meet these requirements.

We have seen (Point III, p. 35 *ante*) that a grant of moneys in general terms even for the general welfare of the United States, without further specification as to purpose, would violate Article I, Section 8, Clause 1, of the Constitution as well as the appropriation clause thereof, because of lack of specification as to purpose. It is thus perhaps unnecessary for us to rely upon the doctrine against delegation of legislative power which is implied from the separate nature of the three great departments of govern-

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[2]This exaction is not, as the Government argues, a "special purpose" tax. It is a "no-purpose" exaction the proceeds of which may be applied at the absolute discretion of the Philippine Government. We do not, as the Government seems to think, argue that the designation of a purpose, if it be a proper public purpose, in a tax law, renders the tax invalid.

ment. But whether this grant is to be tested by the appropriation clause or by the doctrine forbidding a delegation of legislative power, the result is the same. By either test it is condemned by the utter lack of designation of specific purpose.

This would be true even if the grant were made to the President or some other officer of the United States Government, and must be even more true when made to another government. We seriously question the right of Congress to impose a tax, none of whose proceeds are to go into the general treasury of the United States, but all of which are to be paid to the Philippine Government, even for specified purposes, assuming their propriety. Certainly when, in addition to doing this, Congress does not specify for what purposes the money may be used but leaves it to the Philippine Government to appropriate such moneys, collected in the United States, out of the Philippine Treasury for any purpose which it sees fit, the Act is, on its face, invalid.

It is asserted by the Government, however, that if there be no appropriation to a specific purpose or purposes, as there obviously is not, in Section 602½ of the Revenue Act of 1934, an appropriation may be found in the Permanent Appropriation Repeal Act of June 26, 1934 (Chapter 756, 48 Stat. 1224, at p. 1233). Section 20(a) of that Act provides, in so far as relevant: "The funds appearing on the books of the government and listed in subsections (b) and (c) of this section shall be classified on the books of the treasury as trust funds. All moneys accruing to these funds are hereby appropriated, and shall be disbursed in compliance with the terms of the trusts." We presume that the 83 items which follow are intended to be under subdivision (b), although there is no such heading. Items

(1) and (2), which must be intended by the Government, refer, respectively, to a Philippine Special Fund (customs duties) and a Philippine Special Fund (internal revenue). The reference to the statutes at large are 36 Stat. 84 and 46 Stat. 685. Neither of these statutes has anything to do with the proceeds of the tax levied by Section 602½ of the Revenue Act of 1934. Thus, this alleged "appropriation" has nothing to do with our case. Assuming it had, however, it is plain that the so-called "appropriation" adds nothing to the provisions of Section 602½, the purposes for which the moneys are to be expended being in no way made more explicit.

V

THE REQUIREMENT THAT THE PROCEEDS OF THIS EXACTION BE DONATED TO THE PHILIPPINE GOVERNMENT BUT ONLY PROVIDED IT HAS REFRAINED FROM LEGALLY PERMISSIBLE ACTION IN SUPPORT OF ITS PRODUCERS OF COCONUT OIL IS FOR THE SOLE PURPOSE OF AIDING SPECIAL AND LOCAL INTERESTS IN THE UNITED STATES AND CLEARLY PREVENTS THE EXPENDITURE BEING IN THE GENERAL WELFARE OF THE UNITED STATES.

Had this statute required that the proceeds of this exaction be paid over to the producers of our domestic oils in competition in the United States with coconut oil of Philippine origin, there would of course be no question but that the exaction would be invalid as not being levied or spent for the general welfare of the United States, but only in aid of special and local interests. The statute, however,

does specifically require that the proceeds of the exaction be spent in such a way, and in such a way only, as to positively insure that the severe handicap imposed upon coconut oil of Philippine origin by the alleged excise will not be compensated for by a Philippine Government subsidy. In other words, the expenditure is required to be made in such a manner and only on such a condition precedent that the local and special interests of the producers of domestic oils must be positively benefited and the interests of the producers of Philippine coconut oil positively injured.[1] The situation then is that not only do the levy of the exaction and the requirements in connection with the spending of its proceeds have the collateral effect of benefiting the competing products not taxed—which may be proper—but the additional effect, expressly provided for in the statute, of working an additional injury upon the product taxed and an additional benefit upon the competing products not taxed.

Now it may be assumed, without conceding the point, that Federal spending may have collateral effects of an intrastate character without legally making the spending special or local. But to expressly provide in the statute for these local and special effects is to make provision for spending not within the competence of the Congress. That is precisely what has been done in this case. Congress may not insert a provision in the statute expressly insuring local benefits and expressly preventing detriments to local and

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[1]Section 602½ being part of the Revenue Act of 1934 was not part of the AAA scheme. The restriction of cotton, hog and corn production pursuant to the AAA scheme of course raised the selling prices of cottonseed oil, corn oil and lard, domestic products in competition with Philippine coconut oil. Hence the purpose of this exaction and the provisions for its spending was to assist these domestic competing products to sell at the higher prices.

special interests. This is spending for local and special ends and not in the general welfare of the United States.

In order that we may better visualize and appreciate the special and local effects expressly provided for in this statute in violation of both the Tenth Amendment (See Point VI, *post*) and the general welfare clause, let us assume, as was the fact, that before the imposition of this exaction coconut oil of Philippine origin was selling in the United States at seven cents a pound and that domestic oils in competition therewith or capable of being substituted therefor were selling in the United States at eight cents a pound. A proposed tax of three cents a pound is imposed upon coconut oil of Philippine origin, promptly raising its selling price to ten cents a pound and thus enabling the producers of the domestic oils in competition therewith to undersell the coconut oil of Philippine origin. So far nothing beyond the competence of the Congress had been done. Assume further, however, that in the same statute in which this excise tax is imposed, Congress should provide that the proceeds of an entirely proper excise tax on coconut oil of Philippine origin be granted as a subsidy to the domestic oils in competition therewith, would there be any question at all but that what was originally a proper excise tax would now become an unlawful exaction imposed for the purpose of being spent in a local and special manner and not in the general welfare of the United States? We need go no further to invalidate the exaction, but would it not also be obvious that in addition to the illegality of such local and special spending, a clear and definite regulation of intrastate concerns would have been provided for in violation of the Tenth Amendment (See Point VI, *post*).

Now let us turn to the statute as it is. It does not provide that the proceeds of the exaction be distributed as

a subsidy among the producers of the domestic oils capable of being substituted for coconut oil of Philippine origin or in competition therewith. It does, however, specifically and expressly provide for the negative equivalent thereof. It provides that with the proceeds of the exaction there shall be purchased the abstention of the Philippine Government from its perfectly lawful privilege and prerogative of aiding its own producers of coconut oil with a subsidy, whether out of the proceeds of this exaction donated to it under the terms of the statute or in some other way. The only difference between this double-barreled device and the clearly illegal double-barreled device first suggested is that in the first case the local and special interests of the domestic oil producers are subsidized and the price relationship between coconut oil of Philippine origin and the domestic oils, a purely intrastate matter, is regulated, whereas in the second case coconut oil of Philippine origin is crippled in its competition with the domestic oil, not, it is to be noted, by the mere imposition of a lawful excise but by an express prohibitory provision and stipulation of the statute.

Is it not perfectly clear that this device converts the spending (assuming that the bulk donation to the Philippine Government could possibly be, as we deny, in the general welfare of the United States) into a spending for special and local purposes, whether or not in violation of the Tenth Amendment it also affects the regulation of intrastate concerns, to wit, the pegging of the differential in price between coconut oil of Philippine origin and domestic oils? Of course the former consideration alone destroys the statute. But in addition it is perfectly plain, is it not, that an express and far-reaching regulatory effect upon this price relationship in violation of the Tenth Amendment is definitely provided for and effectuated? (See Point VI, *post.*)

VI

NOT ONLY FROM THE LEGISLATIVE RECORD AND SURROUNDING CIRCUMSTANCES BUT FROM THE FACE OF THE STATUTE ITSELF IS IT CLEAR THAT THIS EXACTION IS NOT AN EXCISE LEVIED FOR REVENUE BUT AS DEMONSTRATED BY THE EXTRAORDINARY REQUIREMENTS FOR THE SPENDING OF ITS PROCEEDS IS A DEVICE TO INDUCE OR COMPEL THE USE OF DOMESTIC OILS AND FATS COMPETING WITH PHILIPPINE COCONUT OIL BY PEGGING PRICE DIFFERENTIALS SET UP BY THE EXACTION, AND THUS CONSTITUTES AN INVALID REGULATION OF INTRASTATE COMMERCE.

If the great and almost illimitable power lodged in the Federal Government to levy excise taxes upon transactions internal to the States, and to freely select the objects and victims of taxation, is to be saved from utter abuse, it is plain that exactions of a novel and extraordinary character, having marked intrastate regulatory effects, but labeled excises, should be carefully scrutinized by the courts and unhesitatingly condemned as unconstitutional if they be such

In at least three respects this legislation is either novel or extraordinary. In the first place, the proceeds of the alleged excise never go into the general fund of the United States In the second place, these proceeds are to be paid direct, without prescription as to use, into the treasury of a Government which is no longer a territory or possession of the United States. In the third place, these proceeds are not to be paid to the Philippine Government at all unless it

has complied with an unprecedented and extraordinary condition precedent, to wit, the non-granting of a subsidy to its own producers of coconut oil, copra and allied products.

1. The total lack of concern on the part of Congress with revenue is conclusively demonstrated by the statutory provisions themselves whereby the entire proceeds of the exaction are devoted to the purposes of the Philippine Government, and not to pay the debts or provide for the common defense or general welfare of the United States.

If the mere fact that an exaction raised money was sufficient to sustain it as a tax, then every exaction would be lawful. If the mere fact that an exaction raised money for the general fund of the United States from which Congress is required to appropriate for national purposes was sufficient to justify the legality of any exaction as a tax, then all exactions could be made lawful. But such cases as the *Child Labor Tax Case*, 259 U. S. 20, *Hill* v. *Wallace*, 259 U. S. 44 and *United States* v. *Constantine*, 296 U. S. 287, belie the assertion. Exactions imposed without justification other than to obtain regulatory effects within the States have in many cases in addition to the above been held by this Court to be penalties in the guise of taxes.

Our exaction, however, does not require the application of any such doctrine as laid down by this Court in the cases just cited. We do not complain of the intrastate regulatory effects of this exaction as an exaction. We do complain that it is apparent on the face of the statute that not the slightest attempt has been made by Congress to provide for the spending of the proceeds thereof in the national interest. We do assert that the statutory provision requiring the donation of the entire proceeds of this exaction to

the Philippine Government clearly indicates that the exaction was not levied in the least degree for the revenue purposes of the United States. This method of disposing of the proceeds of the exaction when coupled with the proviso against the subsidizing of coconut oil by the Philippine Government was in fact a device for precisely the opposite purpose, that is to prevent revenue accruing to the United States, while at the same time injuring Philippine coconut oil.

The Government asserts that the statute "appropriates" the money to the Philippine Government, but if so it does this without any specification whatsoever of purpose and indicates very clearly the lack of concern on the part of Congress as to what the Philippine Government should do with the money if only it did not subsidize its producers of coconut oil. Obviously, the statute provides not for an appropriation to specific national purposes but for a gift to the Philippine Government to spend at its will, whim or fancy. The purpose of the statute was not to raise revenue for the proper national purposes of the United States, for to do this would have been a breach of faith toward the Philippine producers of coconut oil whose products the United States had agreed not to burden with an import tax. It is not an import tax and hence does not breach the letter of the agreement, but it plainly breaches its spirit. It can thus be seen that the purpose of this exaction and the extraordinary requirements for the spending of its proceeds was to take money from the processors of Philippine coconut oil and to avoid its becoming revenue of the United States.[1] (See the very apposite remarks of Senators Con-

[1]The Government argues that in considering whether or not Section 602½(a), Revenue Act of 1934, is designed to

nally and Tydings, *infra*, pp. 68, 70.) Thus, entirely aside from its ulterior purpose, the effectuation of which is expressly provided for on the face of the statute, the Act does not constitute a taxing statute at all and is for this reason invalid.

2. That the concern of Congress, to the entire exclusion of a revenue purpose, was with the regulation of the price differentials between Philippine coconut oil and competitive domestic oils and fats is entirely apparent from the proviso against the granting of a subsidy to the former.

We have no quarrel with the doctrine that the motives and purposes of Congress in levying a true excise cannot be searched out and employed to invalidate the tax. If an excise valid on its face is calculated or indeed intended to accomplish moral, social or economic ends, as well as raise revenue, the courts cannot speculate as to what induced Congress to select the particular object of taxation or to fix upon the amount and character of the tax. When, however, Congress is not content to levy an excise and to permit it to have its inevitable but collateral effects (which may

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raise revenue for the purposes of the United States, it is justified in considering the excise taxes levied therein upon coconut oil of non-Philippine origin and upon other imported oils, these being true excises since the proceeds go into the general fund of the United States. Of course, these taxes raise revenues; but the novel, peculiar and extraordinary spending provisions associated with our particular exaction and an integral part thereof do not apply to these taxes. It is plain, therefore, that our exaction is set entirely apart and must be considered, when attacked, entirely separately from what are concededly proper excise taxes which happen to be levied in the same section of the law.

include marked regulatory effects in the intrastate domain) but inserts in the statute as an integral part thereof a provision or provisions having nothing to do with insuring the collection of the tax, or with restricting the spending of its proceeds to proper national purposes, but explainable only as intended to accomplish a forbidden end, we do claim that Congress has exceeded its powers. That is precisely what Congress has done in this instance.

Not content with the ordinary procedure of levying a domestic processing tax of 3¢ a pound upon coconut oil originating in the Philippine Islands[2] and appropriating the proceeds thereof to specific purposes in the "general welfare", Congress by express provision of the statute in which the alleged excise is levied, has provided that the proceeds of the alleged excise shall be disbursed in a particular and unusual way so as to further handicap Philippine coconut oil in its competition in this country with domestic oils. We need not speculate as to what we could do, if anything, if the tax had been levied in the ordinary way so that the proceeds thereof would go into the general fund and an appropriation, even with these extraordinary incidents, made in regular course. The fact is that the levy of the alleged excise and the spending of the proceeds thereof are inextricably tied together. Just as in the AAA processing tax cases, the invalidity of the one destroys the other.

It is concededly competent for Congress to handicap coconut oil of Philippine origin in its competition with domestic oils by the imposition of an excise, and if only an excise is imposed the motives or purposes of Congress will not be inquired into. This statute does not, however, stop

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[2]Equal to nearly one-third of the manufacturing cost of petitioner's coconut oil soaps (R. 5).

with the levying of an excise. It goes further. Not being content with allowing the excise to have the collateral effect of severely handicapping Philippine coconut oil in its competition with domestic oils, Congress expressly stipulates that the proceeds of the excise shall only be spent so as to insure that no attempt shall be made by the Philippine Government to mitigate or destroy the great advantage or price differential granted to domestic oils as a result of what otherwise would have been a legitimate excise. In other words, Congress is not satisfied with the collateral effects of a lawful excise which for reasons of clear public policy we cannot attack by attributing to Congress motives or purposes to regulate what is not its province to regulate. The fatal defect in this statute is that on its face by express provision it seeks to, and inevitably does, insure the accomplishment of an illegal regulation, to wit, the "pegging" of price differentials.

The obvious impossibility of this Court supervising and censoring the motives and purpose of Congress in the levying of ordinary excise taxes upon transactions internal to the several States is plain. So important is the power to tax to the integrity of a government, that it is plain that this Court should be most reluctant, as it always has been, to strike down what appear to be excise taxes upon their face by reason of the motives and purposes of the Congress undisclosed upon the face of the statutes. This reluctance is exhibited in such cases as the *McCray*[3] case and the *Doremus*[4] case.

Prior to the *AAA*[5] case, however, this Court had never been presented with the necessity of examining the motives

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[3] *McCray* v. *U. S.*, 195 U. S. 27.

[4] *U. S.* v. *Doremus*, 249 U. S. 86.

and purposes of the Congress in the exercising of its spending power under the Constitution. The doctrine of *Massachusetts* v. *Mellon*[6] prevents that question from arising but in rare instances. Only in the seldom met with case, of which ours is an example, where Congress has chosen to tie up its imposition of an exaction with the expenditure of the proceeds thereof can the question be effectively raised. This is a freak situation. We do not suggest that even in such an extraordinary and rarely to be met with situation this Court should examine into the mere motives and purposes of Congress in providing for the spending of the proceeds of the exaction. We do suggest that no great harm to the integrity of the taxing power or the spending power could ensue if such an examination was made. No reasons of public policy would seem to prevent the adoption of a doctrine by this Court for the effective restriction of the spending power to its proper channels in the rare cases where its exercise can be attacked. That Congress has frequently abused the spending power because of the inability of any one to attack its pretended exercise thereof in all but rare cases, is hardly to be denied.

When this Court was presented with an abuse of the taxing power by a state legislature with respect to the freedom of the press it found no difficulty in unanimously condemning the motives and purposes of the legislature although undisclosed on the face of the statute. *Grosjean* v. *American Press Company*.[7] In this case of ours the motives and purposes to regulate intrastate matters, obvious from the legislative debates, are not only disclosed on the face

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[5]*U. S.* v. *Butler*, 297 U. S. 1.

[6]262 U. S. 447, 482.

[7]297 U. S. 697.

of the statute *but the intrastate regulation is expressly provided for and ensured by the proviso against subsidy to coconut oil, copra and allied products.* In the *Oleomargarine tax*[8] case, if the Congress not being satisfied with the regulative effectiveness as a collateral matter of a large tax upon oleomargarine colored to resemble butter, had provided that the seller of oleomargarine should in no event sell the product for less than the cost of its production plus the tax, would there be any question but that Congress had acted in violation of the Tenth Amendment?

We know of no case where upon the face of the statute an express provision can be pointed to which requires and commands the levying of a tax or the disbursement of the proceeds thereof for the purpose of local regulation, in which the exaction has been held to be valid. *Hampton & Co.* v. *United States,* 276 U. S. 394, is no exception. That case involved tariff duties which are a regulation of foreign commerce and not an exercise of the taxing power. *University of Illinois* v. *United States,* 289 U. S. 48; *Head Money* case, 112 U. S. 580. In exercising its plenary power to regulate foreign commerce, Congress can impose penalties against the importation of goods of the same kind as are manufactured in this country. It is obvious that the lowering and raising of tariffs may benefit, injure or destroy businesses within the United States. These are unavoidable but collateral effects. The mere fact that Congress mentions in the preamble to a tariff statute that one of its purposes in levying the tariff is to benefit domestic industry does not detract from the validity of the tariff. If, however, Congress, not being content with collateral effects, should insert in such a statute, as it has done in

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[8] *McCray* v. *U. S.*, 195 U. S. 27.

our case, an express provision to insure the efficacy of the tariff to bring about a regulation of local matters, that would be quite another matter. The mere disclosure of an improper collateral purpose is one thing. The express providing for intrastate regulatory effects is another. Moreover, as the Government points out, tariffs to protect domestic industry have been known and approved since the First Congress, while the instant statute is a novel and extraordinary device having no justifiable purpose or possibility of wide application.

3. The legislative record conclusively shows that Congress in imposing this exaction and providing for the spending of its proceeds was not in the least concerned with raising revenue for legitimate national purposes but only with the intrastate matter of regulating the selling price differentials between Philippine coconut oil and competitive domestic oils and fats.

Even a casual examination of the legislative record and debates upon this Act would demonstrate to the reader that Congress' sole purpose in passing this Act was to establish a price differential between coconut oil of Philippine origin and domestic oils in competition therewith in favor of domestic oils, and after establishing this price differential to maintain and "peg" it against any effective action by the Philippine Government. For the effectuation of this purpose, the Congress put into the statute a provision to the effect that the proceeds of the tax should only be paid to the Philippine Government in the event that this Government had not granted any subsidy to coconut oil, copra or allied products. Nothing more than this is necessary to

show the illegal purpose of the exaction. It is not merely that the purpose is disclosed but that Congress has taken a definite and concrete step on the face of the statute to effectuate the unauthorized purpose.

We could well rest here without even adverting to the legislative debates, for we do not rely upon what was said there, even in part. We merely call attention briefly, however, to what went on in Congress as in confirmation of the obvious purpose to be effectuated by the express provision of the statute.

The 3¢ a pound levy on coconut oil, as imposed in the bill reported by the Finance Committee of the Senate, was a true excise with the money going into the general fund of the United States. As the United States in the Philippine Independence Act had agreed to levy no import tax upon the first 200,000 long tons of coconut oil imported into the United States from the Philippines, it was plain that this proposal constituted a breach of faith toward the Philippine producers of coconut oil. An amendment to the Act was offered by Senator Norris which provided for the payment of the proceeds of the exaction to the Philippine Government together with the proviso that the Philippine Government should not receive the proceeds if it subsidized its own producers of coconut oil, copra, and allied products. (Congressional Record, 73rd Congress, Second Session, Volume 78, Part 6, Page 6380.) This amendment was adopted, and Section 602½ as it now reads was reported out by a Conference Committee (Vol. 78, Congressional Record, p. 7819) and became law.

Senator Norris' remarks in support of his amendment (pp. 6379-82) show very clearly that revenue for the

United States was not being considered in the least and that aid to domestic producers of oils and fats was the sole purpose of the exaction. Senator Reed's queries to him show likewise that he was not greatly concerned with constitutionality.

> "Mr. Norris. Mr. President, I take this opportunity to thank the Senator from Mississippi [Mr. Harrison] for his kindness in agreeing to lay aside the oil amendment until today. * * *
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> "The processing tax which was inserted in the bill by the House provided for a tax of 5 cents a pound upon coconut oil and copra. Its effect, if unmodified, would be the same as though we had levied a tariff tax. The Government would make money out of it because the tax would be paid into the Treasury of the United States.
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> "As one who is in favor of giving independence to the Philippine Islands just as quickly as we possibly can, I voted for every amendment to the Philippine independence bill that had a tendency to bring about that end. Those of us who felt as I did favored those amendments, and then we voted for the bill as it finally became a law.
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> "Mr. President, my amendment in the first place provides that the revenue derived from this tax shall not be covered into the Treasury of the United States but shall be held in a separate fund and paid to the Philippine government. The objection first raised was and is that the Philippine government could still grant a bonus or subsidy in the same amount to the producers of coconut oil and copra in the Philippines, and thus nullify the effect of our tax. In other words, if the Philippine government should do that, our tax would be absolutely of no effect so

far as the importation of coconut oil and copra from the Philippines are concerned. It would not help us and it would not help the American farmer. The Philippine producer of the coconut oil and copra would be able, with a bonus of the same amount as the tax, to sell as he did before, and the American farmer would get no benefit from the tax.

"To meet that objection, it is provided in my amendment that if the Philippine government at any time shall grant a bonus or subsidy for the production of coconut oil or copra, then the provision will at once become null and void and of no effect, and the producers will stand under the amendment of the committee just as it was reported.

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"Mr. Connally. Mr. President, I desire to ask the Senator a question about his amendment. Suppose the Filipino government should say, 'We will take this tax, and then we will just pay it back to the producer.'

"Mr. Norris. They cannot do it under the amendment.

"Mr. Connally. The Senator's amendment would prohibit that?

"Mr. Norris. Yes, sir.

"Mr. Connally. In other words, they could neither use the tax as a subsidy, nor could they grant an independent subsidy?

"Mr. Norris. They could not do either one.

"Mr. Connally. If that be true, I cannot see why the amendment would not have the effect of aiding the domestic producer because the tax would be paid, and it is immaterial from his viewpoint what is done with it, whether it is thrown in the sewer or given to the Philippine government.

"Mr. Norris. The Philippine government will get the money. They can use it in any way they want to use it, except as prohibited by the amendment itself; and that only goes so far as to say that, while they are getting this money, they must not by law provide for giving a subsidy to the production in the Philippine Islands of copra and coconut oil.

"Mr. Reed. Mr. President—

"The Vice President. Does the Senator from Nebraska yield to the Senator from Pennsylvania?

"Mr. Norris. Let me yield first to the Senator from Iowa (Mr. Murphy), who has been trying for some time to get my attention.

"Mr. Murphy. Mr. President, the Senator from Texas (Mr. Connally) has asked the question I had in mind.

"Mr. Johnson. Mr. President—

"Mr. Norris. Very well. I yield, then, to the Senator from Pennsylvania.

"Mr. Reed. Mr. President, has the Senator considered the question whether we have power to levy a tax by a law which on its face states that the revenue is not to be taken for the American Treasury, but for the treasury of an alien government?

"Mr. Norris. No; in my judgment, we probably could not do that. I have never thought of it before; but, at first blush, I should say that if we gave the tax to an alien government, there would be something in that suggestion. We are not doing that, however. We are giving it to our wards. They are now under our Government, and we are supreme as to them. We can pass any law in that regard that we desire to pass.

"Mr. Reed. I grant that; but I do not believe that the Federal Government has the constitutional

power to levy a tax for the benefit of any other government, whether it is the government of the city of Omaha or the government of the Philippine Islands or a government set up under any other system.

"Mr. Norris. I do not agree with the Senator. I do not believe that any constitutional provision is involved here by which this tax would be nullified; and we have done the same thing in our tariff laws. We have given back, in some instances, tariffs that have been levied.

"Mr. Reed. To other governments?

"Mr. Norris. No; not to other governments."

Senator Tydings summed the whole matter up at page 6312, *Ibid*, when he said:

"I have been approached by people from my own state who were over here by the dozens saying they wanted this tax imposed in order to keep Filipino products out of this country. That is all that is behind it. There is not an ounce of revenue in it. It is a lie on its face. It does not deserve the support of any man who wants to keep faith and be honest with the Filipino people."

The whole course of the debate in the Senate after the proposal of the amendment is to the same effect.[9]

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[9]The discussions in the Senate are found on pages 6308 to 6325, 6327 to 6732, and 6380 to 6389 of the Congressional Record, 73rd Congress, Second Session, Volume 78, part 6.

4. This device for regulating intrastate matters in the guise of a tax is condemned by the principles enunciated in the *AAA* case, *U. S.* v. *Butler*. Assuming the minority in that case were justified in believing the regulatory effects of that statute to be doubtful and speculative, those in our case are definite and certain.

Our situation, of course, is not in all respects the same as that presented in the AAA processing tax cases which seem to be the only cases in this Court which have considered the propriety of a particular exercise of the power to spend by Congress. The underlying objection to this statute is, however, the same in principle, and we respectfully submit that it presents a much clearer example of an improper exercise of that power, entirely aside from the special and local spending point which we have already discussed.

In the *AAA* case the minority thought that the intrastate results obtained by the spending were collateral and that the coercion was speculative and doubtful. In our case the effect of the prohibited regulation is direct and certain. The Philippine Government is completely disabled from assisting its producers of coconut oil to overcome the price differential clamped down by the exaction against coconut oil in this country in favor of domestic oils. The price in this country of coconut oil of Philippine origin is definitely fixed by express provision of the statute and not merely by the collateral effects of an excise tax. The price of such coconut oil being fixed and pegged, it is inevitable, not merely probable, that the prices of competing domestic oils will rise. Surely this is Federal regulation of intrastate concerns.

Congress has under the guise of taxes—held by this Court to be penalties—sometimes attempted to regulate intrastate concerns. *Child Labor Tax Case,* 259 U. S. 20; *Hill* v. *Wallace,* 259 U. S. 44; *United States* v. *Constantine,* 296 U. S. 287. In only one case, to our knowledge, has it attempted to do so under the guise of the spending power. In the processing tax cases (*United States* v. *Butler,* 297 U. S. 1) this Court held that when the proceeds of an exaction were required to be spent in such a way as to coerce or induce farmers to agree to restrict production, the tax was invalid, the fact of coercion being deduced from what the Court concluded was the competitive disadvantage suffered by farmers not agreeing to restrict production and hence receiving no pecuniary benefits. In our case there is no necessity to speculate about the competitive disadvantage of the producers of Philippine coconut oil brought about by the expressly conditioned spending. The statute expressly provides that there is to be no spending unless there be no subsidy. The growers of Philippine coconut oil have been —by express provision of the statute—kept in a situation wherein they will feel the full impact of the competitive disadvantage induced by the tax of 3c a pound on their coconut oil normally selling for 3c a pound. In the *AAA* case, those farmers who did not agree to restrict production had (as the dissenting opinion points out) the unlimited privilege of increasing production, which privilege was denied to the contract-signers. Their competitive disadvantage through not receiving the subsidy was, therefore (it was argued), uncertain and speculative. In our case, it is unquestionably definite and certain.

That the principles laid down in the *AAA* case cover our situation clearly appears from the following. At page

73 of the opinion of this Court in that case, Mr. Justice Roberts, after stating that an appropriation to be expended by the United States under contracts calling for violation of a State law would be clearly unconstitutional, spoke as follows:

> "Is a statute less objectionable which authorizes the expenditure of Federal moneys to induce action in a field in which the United States has no power to intermeddle? The Congress cannot invade state jurisdiction to compel individual action; no more can it purchase such action."

The learned Justice had previously said that even if the AAA plan could be assumed to be non-coercive and purely voluntary, it would stand no better so far as Federal power is concerned.

Section 602½ of the Revenue Act of 1934 contains these words:

> "* * * All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection."

The United States thereby makes a unilateral contract with the Philippine Government whereby it promises to pay to the Philippine Government the entire proceeds of this exaction, not on condition that that Government use the funds for specified purposes or does not use them for prohibited purposes, nor in return for any promise by the Phil-

ippine Government, but in return for an act of abstention expected to be performed by the Philippine Government. So long as that Government abstains from subsidizing its producers of coconut oil, copra, or allied products, it is to receive from the United States the entire collections from this exaction. If at any time it grants such a subsidy, no future payments are to be made. The only purpose of such a proviso can be "to induce action in a field in which the United States has no power to intermeddle." It is true that the action or rather the refraining from action which is immediately induced is that of the Philippine Government. This cannot, however, affect the situation. Its cooperation is purchased in a scheme to maintain the price differentials in the United States between coconut oil of Philippine origin and domestic oils brought about by the processing tax. Congress itself has no power to maintain this price differential. How can it then be said, even assuming that the Philippine Islands can in any way still be regarded as a territory for which Congress may make rules and regulations, that it can exert this power by purchasing the cooperation of a subordinate instrumentality to attain the illegal end?

In this connection, the examples given by Mr. Justice Roberts at pages 75 and 76 of the *Butler* opinion are of considerable interest, and some at least of them quite analogous. The first example given is of the imposition of a tax upon producers of raw materials and the appropriation of the proceeds to processors thereof "either with or without conditions imposed as the consideration for the payment of the subsidy," the purpose being to reduce the prices of raw materials and to correspondingly increase the welfare of the processors of these raw materials. The only difference between this situation and ours is that in-

stead of giving the proceeds of the tax imposed upon those to be injured to those to be benefited the proceeds are disposed of in such a way as to prevent the compensatory conferring of benefits upon those who have been injured by the tax. What difference does it make whether benefits which might legally be conferred upon a competitive product are purchased from or the proceeds of an otherwise proper tax donated to the untaxed competitors whom it is desired to additionally benefit? The other four examples given by Mr. Justice Roberts involve the purchase by the Federal Government of the cooperation of intrastate businesses in carrying out regulations of local matters which Congress has no power to effectuate. If the cooperation of persons engaged in local activities cannot be purchased by the Federal Government for the regulation of those activities, then how can it be claimed that the cooperation of the autonomous government of the Philippine Islands can be so purchased for the same purpose?

VII

THE GRANT TO THE PHILIPPINE GOVERNMENT WITH THE PROVISO AGAINST A SUBSIDY IS AN INTEGRAL AND ESSENTIAL PART OF THE STATUTORY SCHEME, LACKING WHICH THE STATUTE WOULD NEVER HAVE PASSED, AND THE PROVISION AGAINST A SUBSIDY HAVING BEEN COMPLIED WITH, IT IS IMPOSSIBLE TO HOLD THAT THE PROCEEDS OF THE TAX SHOULD GO INTO THE GENERAL FUND OF THE UNITED STATES.

While the statute contains the usual separability clause (Sec. 802, Appendix, page iv), it is settled that separ-

ability provisions in the precise language of that contained in the present Act are merely aids in determining the legislative intent and not inexorable commands.[1] The effect of including such clauses in statutes is simply to reverse the presumption, which otherwise would be indulged in, of an intent that the Act should be wholly ineffective unless held to be validly operative as an entirety.[2] But the inclusion of a separability clause and the presumption thereby created does not authorize the Court to rewrite the statute and give it an effect altogether different from that sought by the statute viewed as a whole.[3] On the contrary, the statute as an entirety is invalid if there is a "clear probability that the invalid part being eliminated, the legislature would not have been satisfied with what remains."[4]

It will be observed that the separability provision[5] does not in terms provide that Section 602½ shall be separable,

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[1] *Dorchy* v. *Kansas*, 264 U. S. 286; *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362.

[2] *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242; *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184.

[3] *Retirement Board* v. *Alton R. Co.*, 295 U. S. 330, 362.

[4] *Williams* v. *Standard Oil Co.*, 278 U. S. 235, 242. An inseparability clause creates only "a presumption that, eliminating invalid parts, the legislature would have been satisfied with what remained" (*Champlin Co.* v. *Commission*, 286 U. S. 210, 235). As pointed out in *Utah Power & Light Co.* v. *Pfost*, 286 U. S. 165, 184, the presumption created by the separability clause is overcome by considerations which show a "clear probability that the legislature would not have been satisfied with the statute unless it had included the invalid part".

[5] "Sec. 802. If any provision of this Act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby."

but only that the "provisions" of "the Act" shall be separable. The usual rule that mutually dependent provisions of a statute must fall if either is bad[6] has increased force when the provisions are found in the same section of the statute.[7] In the case of the Act before this Court, everything appears *in toto* in a single section of the Act (Sec. 602½, Appendix, pp. i-iv),—convincing evidence that it was intended to operate as a whole.

As the legislative record and debates heretofore discussed in Point VI, Section 3, conclusively show, the purpose of Section 602½ was not to lay an excise for general governmental purposes of the United States. It was to benefit the producers of domestic oils and fats. Congress refused to accept the Act in the form first proposed because of the gross breach of faith involved toward the Philippines. The Revenue Act of 1934, including Section 602½, was passed when the ink was hardly dry on the Philippine Independence Act in which Congress had solemnly pledged its faith through the new Government of the Commonwealth of the Philippines to its producers of coconut oil that it would levy no import taxes upon the first 200,000 long tons of coconut oil imported from the Philippines. While a processing tax would not have technically violated this obligation, it would obviously have violated the spirit of the undertaking. As we have previously shown this was fully recognized by Congress and by the President of the United States. The amendment providing that the entire proceeds of the taxation should go to the Philippine Government, provided only it had granted no subsidy to its own producers of coconut oil, was an integral and essential

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[6] *Allen* v. *Louisiana*, 103 U. S. 80, 84.

[7] *International Textbook Co.* v. *Pigg*, 217 U. S. 91, 112, 113.

part of the statute without which it is impossible to conceive of its passage unless we are willing to say that Congress was willing to violate its solemn pledge toward the Philippine coconut oil producers. To hold that this provision is separable is to force Congress into a breach of faith which it expressly avoided. The result obtained would therefore be the opposite of that intended by Congress. It is perfectly plain, therefore,—in the words of *Pollock* v. *Farmers Trust Co.*, 158 U. S. 601—that the different parts of this Act

> "are so mutually connected with and dependent on each other, as conditions, considerations or compensations for each other, as to warrant a belief that the legislature intended them as a whole, and that if all could not be carried into effect, the legislature would not pass the latter independently."

An additional result of carving away from Section 602½ the provision for payment to the Philippine Government would be that the proceeds of this tax would be left high and dry in the special fund. The power of Congress by an appropriation act to appropriate this fund to purposes other than that for which it was raised would be doubtful.[8] In *United States* v. *Butler, supra*, we are not aware that the argument was even made that this could not be done, even though in that case no provision had been expressly made in the statute for any special fund.

In one or more of its briefs in this or kindred cases in the Court below, the Government appears to have taken

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[8]To the argument that the tax goes on even if a subsidy be paid, it might be answered that the spending goes on, if there be no subsidy, even after the Philippines are completely free. But the tax falls and does not go on if the spending provisions are invalid, and their invalidity cannot be determined by considering whether or not the subsidy has actually been paid.

the position that since the Act as originally introduced contained no provision for appropriation to the Philippine Government of the proceeds of the excise tax proposed to be levied, and such provision was inserted by amendment, these circumstances indicate that the provisions are separable. They would appear to lead to exactly the contrary conclusion. The undeniable fact disclosed by the legislative record is that Congress refused to pass the bill until amended, so as to appropriate the proceeds of the tax to the Philippine Government. This would appear to us to be conclusive evidence of the legislative intent that the provision made for the disposition of the proceeds was an integral part of the tax itself, without which the latter would not have been imposed.

It therefore appears that the argument against separability in this case is far stronger than in the usual case where the only consideration is whether or not the Court ought to strike out part of the statute and uphold the rest in the belief that Congress would have desired the result. To do so in this case would in addition force a breach of faith upon Congress.

VIII

THIS EXACTION, NOT BEING A TRUE TAX, SINCE THE PROCEEDS DO NOT GO INTO THE GENERAL FUND OF THE UNITED STATES, AND IT IS NOT LEVIED FOR THE SUPPORT OF THE GOVERNMENT OF THE UNITED STATES, IS A NAKED EXPROPRIATION OF PROPERTY VIOLATING THE FIFTH AMENDMENT.

The appropriation clause of the Constitution plainly requires that the proceeds of all taxes shall go into the gen-

eral fund of the United States to be appropriated out by Congress only for specific and reasonably definite purposes within Congressional competence, to wit, for the general welfare and other national purposes of the United States and not to meet special or local demands. (See Points III, IV and V, *ante*.) Concededly the proceeds of this exaction never go into the general fund of the United States but are required by the statute to be held as a mere temporary matter by the Treasury of the United States for transmission to the Philippine Government without any specific or definite appropriation by Congress. The anti-subsidy clause makes the payment to the Philippine Government one for local and special ends (Point V, *ante*).

The power residing in Congress to select the objects and victims of taxation is almost plenary. The justification therefor is that all taxes shall be imposed for the support of the Government of the United States, go into the general fund thereof, and be disbursed in the general welfare thereof or for other national purposes only. Under the power to tax, Congress is free to confiscate the property of particular businesses and classes of persons, not even subject to any equal protection clause, provided only that the proceeds of the taxation go into the general fund and are devoted to the general good by Congress pursuant to reasonably particular appropriations. A safeguard of the highest importance to prevent a contrary practice is the Constitutional requirement in Article I, Section 9, Clause 7, previously discussed in Point IV, *ante*, which reads

> "No money shall be drawn from the treasury, but in consequence of appropriations made by law."

This requires, as we have demonstrated, that Congress turn its mind, when authorizing the disbursement of moneys, to

the particular situations justifying the expenditures and the specific and definite necessity therefor. If in the statute levying the tax—which, it is never to be forgotten, is nothing less than a confiscation of property unless the proceeds are appropriated to the common good—Congress may declare that all the proceeds of an exaction, no matter how large, no matter how unable it may be to determine at the time what the amount of these proceeds may be, and with no definite or specific necessities in mind for their use, much less those of the United States, shall be turned over in bulk, without passing into the general fund, to an autonomous government such as that of the Philippine Islands for expenditure for any purposes, whether or not conceivably connected with the national purposes of the United States, then all Constitutional safeguards are cast to the four winds. The temptation and inevitable result, as evidenced by this very case, is utterly to forego the necessity of viewing the specific needs of definite situations. This is precisely the purpose of the appropriation clause in the Constitution (pp. 45-48, *ante*).

Bearing in mind that taxation, without devotion to the general welfare, or to pay the debts of the United States and to provide for its common defense, is confiscation, it is the worst kind of public policy to permit the disbursement in bulk, without entry into the general fund, to a particular group or a foreign government of the proceeds of an exaction levied upon a particular class of persons. If the proceeds of all taxes go into the general fund, then the beneficiaries of appropriations from the general fund are unable to attribute their supplies of public money, in these days very lavish, to the confiscation of the property of any particular class of persons. Bearing in mind the essentially private ends to which such huge quantities of public funds have

recently been devoted by reason of the fact that in the ordinary case no citizen has the status to question Congressional expenditures, cannot it be said that the appropriation clause in the Federal Constitution was at least meant to prevent the beneficiaries of Governmental largess, consisting of local and special interests, from attributing their benefactions to Governmental confiscation of the property of particular classes of citizens under the guise of taxation, thus increasing their appetite to urge more and more the expropriation of the property of private persons for their private uses? Of what value would the appropriation clause be in its restrictions upon the method of drawing public monies from the Treasury if it could be evaded by the simple device of not putting the proceeds of tax money into the Treasury at all? Is it not obvious that one of its chief purposes was to prohibit the indulgence in the evil public policy of which we have spoken?[1]

The devoting in this case of the entire proceeds of the exaction to the Philippine Government in an amount now approximating $50,000,000 is the more vulnerable because of the fact that there is not even an appropriation in the tax statute to any specific and definite purposes (Point V, *ante*, pp. 45-48). Nor can it be claimed that there has been the slightest consideration of the need of the Philippine Government for any sum of money, much less this huge sum. The money is turned over in bulk to be disbursed at the will, whim and fancy of the autonomous government of the Philippine Islands, providing only that it has granted no subsidy to the producers of coconut oil, copra and allied products. It is submitted that this is expropriation in its baldest form and a clear violation of the Fifth Amendment

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[1]**See pages 50-51, *ante* for Alexander Hamilton's opinion and historical references.**

which prohibits Congress from depriving any person of property without due process of law.

The principle does not differ from one of those which rendered invalid the processing taxes in the *AAA* cases, *United States* v. *Butler*, 297 U. S. 1. At page 61 of the opinion in that case this Court said:

> "It is inaccurate and misleading to speak of the exaction from processors prescribed by the challenged act as a tax, or to say that as a tax it is subject to no infirmity. A tax, in the general understanding of the term, and as used in the Constitution, signifies an exaction for the support of the Government. The word has never been thought to connote the expropriation of money from one group for the benefit of another. * * * The exaction cannot be wrested out of its setting, denominated an excise for raising revenue and legalized by ignoring its purpose as a mere instrumentality for bringing about a desired end. To do this would be to shut our eyes to what all others than we can see and understand. *Child Labor Tax Case*, 259 U. S. 20, 37."

We have argued that the provisions for the spending of the proceeds of this exaction make it a device for the regulation of intrastate concerns, as was true in the *AAA* case. The above-mentioned principle, however, does not depend upon this. The principle now under consideration prohibited in the *AAA* case the siphoning of the money of processors into the hands of farmers under the guise of taxation. As applied to this case, it prohibits the siphoning of the money of processors into the treasury of an autonomous government, to be spent in its untrammeled discretion for purposes which need not be public and, if public, need not be for the general welfare of the United States.

IX

TO CONSIDER THIS EXACTION AS NOT A TAX BUT AS AN IMPOSITION REGULATING FOREIGN COMMERCE, AS THE GOVERNMENT CLAIMS TO BE POSSIBLE, DOES NOT ADVANCE ITS CASE. IT IS NEITHER POSSIBLE TO SO CONSIDER IT NOR ARE THE INVALID SPENDING PROVISIONS MADE ANY MORE VALID BY SO DOING.

The Government has argued below that if this exaction be invalid as a tax, it can be sustained as an exercise by Congress of its power to regulate foreign commerce. But this argument simply refers to the exaction as an exaction and pays no attention to the invalid provisions for the spending of the proceeds thereof. We do not and could not argue that this imposition on the domestic processing of coconut oil of Philippine origin, viewed separately from the provisions for the spending of its proceeds, is invalid. As a processing tax pure and simple it is valid. It is entirely unnecessary therefore, and advances the Government case not a whit, to attempt to sustain it under the power of Congress to regulate foreign commerce.

This exaction is part of the Revenue Law of 1934 imposing income, estate and excise taxes. It is laid upon the intrastate processing of Philippine coconut oil after this imported oil has come to rest and has become part of the domestic goods within the States. Under the decision in *Schechter* v. *U. S.*, 295 U. S. 495, and *Carter* v. *Carter Coal Company*, 298 U. S. 238, such an imposition on the internal concerns of the States would be clearly invalid if sought to be justified solely as a regulation of interstate commerce. It is equally bad if sought to be justified solely

as a regulation of the foreign commerce which has preceded the interstate commerce, and hence is still more remote.

The cases cited by the Government, in which this Court has held invalid State occupation, license, and privilege taxes discriminating against imports and exports or as burdening interstate commerce, are entirely beside the point. In preserving the integrity of Congressional powers to regulate interstate commerce and foreign commerce from aggression by the States, it is plain that the States cannot be permitted to discriminate against imports, exports or interstate commerce under the guise of taxation. It is equally plain that Congress, having the power to regulate foreign commerce by direct taxes on imports, requires no implication of a power to levy exactions indirectly affecting imports.

The vice in this statute being the provisions for spending, the power under which the imposition is sought to be justified can make no difference. At least this would be so unless the spending could be in some way justified under some power other than the power to spend to pay the debts and to provide for the common defense and general welfare of the United States. Spending, however, can be justified under no other power, and if it could the spending provided for by this statute is clearly not justifiable under the foreign commerce power or any other. Some of the ways in which the Philippine Government might conceivably spend the money would doubtless affect foreign commerce but would not directly regulate it, even if it could be possibly thought that Congress could delegate to the Philippine Government its power to regulate foreign commerce.

Even supposing therefore, contrary to fact, that the Government could justify this imposition on domestic processing by resort to the foreign commerce power, its case is no better than it would be under the taxing power. All the infirmities which we have conclusively demonstrated to exist with respect to the spending provisions of the statute apply equally, irrespective of which power is resorted to in order to justify the imposition.

In making its argument upon this point, the Government distorts our argument with respect to the intrastate regulatory purpose and effect of the spending provisions of this statute and attempts to turn our argument against us. In this it cannot succeed. We do not argue that this exaction is unconstitutional because it may have the incidental effect of restricting imports of coconut oil from the Philippines. On the contrary, our argument is that the selling price differentials between coconut oil of Philippine origin and domestic oils and fats which are established by the laying of this imposition are "pegged" as a result of and as intended by the spending provisions of the statute. This purpose and this effect are the direct results of the spending provisions. The effect upon foreign commerce is the mere incidental result, and of this we do not complain.

CONCLUSION

It is submitted that the order of the United States District Court for the District of Nebraska, Omaha Division, sustaining respondent's demurrer to the petition, should be reversed and the case remanded to the United States Circuit Court of Appeals for the Eighth Circuit with instruc-

tions to overrule said demurrer and enter judgment in favor of petitioner.

Respectfully submitted,

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APPENDIX.

1. SEC. 602½, REVENUE ACT OF 1934, c. 277, 48 STAT. 680, PROCESSING TAX ON CERTAIN OILS.

(a) There is hereby imposed upon the first domestic processing of coconut oil, sesame oil, palm oil, palm kernal oil, or sunflower oil, or of any combination or mixture containing a substantial quantity of any one or more of such oils with respect to any of which oils there has been no previous first domestic processing, a tax of 3 cents per pound, to be paid by the processor. There is hereby imposed (in addition to the tax imposed by the preceding sentence) a tax of 2 cents per pound, to be paid by the processor, upon the first domestic processing of coconut oil of any combination or mixture containing a substantial quantity of coconut oil with respect to which oil there has been no previous first domestic processing, except that the tax imposed by this sentence shall not apply when it is established, in accordance with regulations prescribed by the Commissioner with the approval of the Secretary, that such coconut oil (whether or not contained in such a combination or mixture), (A) is wholly the production of the Philippine Islands, or any other possession of the United States, or (B) was produced wholly from materials the growth or production of the Philippine Islands or any other possession of the United States, or (C) was brought into the United States on or before the 30th day after the date of the enactment of this Act or produced from materials brought into the United States on or before the 30th day after date of enactment of this Act, or (D) was purchased under a bona fide contract entered into prior to April 26, 1934, or produced from materials purchased under a bona fide contract

entered into prior to April 26, 1934. All taxes collected under this section with respect to coconut oil wholly of Philippine production or produced from materials wholly of Philippine growth or production, shall be held as a separate fund and paid to the Treasury of the Philippine Islands, but if at any time the Philippine Government provides by any law for any subsidy to be paid to the producers of copra, coconut oil, or allied products, no further payments to the Philippine Treasury shall be made under this subsection. For the purposes of this section the term "first domestic processing" means the first use in the United States, in the manufacture or production of an article intended for sale, of the article with respect to which the tax is imposed, but does not include the use of palm oil in the manufacture of tin plate.

(b) Each processor required to pay the tax imposed by this section shall make monthly returns under oath in duplicate and pay the tax to the collector of internal revenue for the district in which is located his principal place of business, or if he has no principal place of business in the United States, then to the collector of internal revenue at Baltimore, Maryland. Such returns shall contain such information and be made at such times and in such manner as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may by regulations prescribe. The tax shall, without assessment by the Commissioner or notice from the collector, be due and payable to the collector at the time so fixed for filing the return. If the tax is not paid when due, there shall be added as part of the tax interest at the rate of 1 per centum per month from the time the tax became due until paid.

(c) Subject to such rules and regulations as the Commissioner, with the approval of the Secretary, may prescribe, any person who has sold to a State, or a political subdivision thereof, for use in the exercise of an essential governmental function any article containing any such oil, com-

bination, or mixture, upon the processing of which a tax has been paid under this section shall be entitled to a credit or refund of the tax paid with respect to the quantity of such oil, combination, or mixture contained in such article.

(d) Upon the exportation to any foreign country or to a possession of the United States of any article wholly or in chief value of an article with respect to the processing of which a tax has been paid under this section, the exporter thereof shall be entitled to a refund of the amount of such tax. Upon the giving of bond satisfactory to the Secretary for faithful observance of the provisions of this section requiring the payment of taxes, any person shall be entitled, without payment of the tax, to process for such exportation any article with respect to which a tax is imposed by this section.

(e) If (1) any person has, prior to January 26, 1934, made a bona fide contract for the sale on or after the effective date of this section of any article wholly or in chief value of an article with respect to which a tax is imposed by this section or of any article with respect to which a tax is imposed by this subsection, and if (2) such contract does not permit the addition to the amount to be paid thereunder of the whole of such tax, then (unless the contract expressly prohibits such addition) the vendee shall pay so much of the tax as is not permitted to be added to the contract price. Taxes payable by the vendee shall be paid to the vendor at the time the sale is consummated and shall be returned and paid to the United States by the vendor in the same manner as other taxes under this section. In case of failure or refusal by the vendee to pay such taxes to the vendor, the vendor shall report the facts to the Commissioner, who shall cause collection of such taxes to be made from the vendee.

(f) All provisions of law (including penalties) applicable in respect of taxes imposed by section 600 of the Rev-

enue Act of 1926, shall, insofar as applicable and not inconsistent with this section, be applicable in respect of the taxes imposed by this section.

(g) All collections except as provided in subsection (a) under this section shall, notwithstanding any other provisions of law, be covered into the general fund of the Treasury of the United States (U. S. C., Title 26, Sec. 999).

Sec. 802. Separability Clause.

If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

2. PUBLIC ACT NO. 127, 73D CONGRESS, APPROVED MARCH 24, 1934.

AN ACT

To provide for the complete independence of the Philippine Islands, to provide for the adoption of a constitution and a form of government for the Philippine Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

CONVENTION TO FRAME CONSTITUTION FOR PHILIPPINE ISLANDS

SECTION 1. The Philippine Legislature is hereby authorized to provide for the election of delegates to a consti-

tutional convention, which shall meet in the hall of the house of representatives in the capital of the Philippine Islands, at such time as the Philippine Legislature may fix, but not later than October 1, 1934, to formulate and draft a constitution for the government of the Commonwealth of the Philippine Islands, subject to the conditions and qualifications prescribed in this Act, which shall exercise jurisdiction over all the territory ceded to the United States by the treaty of peace concluded between the United States and Spain on the 10th day of December 1898, the boundaries of which are set forth in article III of said treaty, together with those islands embraced in the treaty between Spain and the United States concluded at Washington on the 7th day of November 1900. The Philippine Legislature shall provide for the necessary expenses of such convention.

CHARACTER OF CONSTITUTION—MANDATORY PROVISIONS

SEC. 2. (a) The constitution formulated and drafted shall be republican in form, shall contain a bill of rights, and shall, either as a part thereof or in an ordinance appended thereto, contain provisions to the effect that, pending the final and complete withdrawal of the sovereignty of the United States over the Philippine Islands—

(1) All citizens of the Philippine Islands shall owe allegiance to the United States.

(2) Every officer of the government of the Commonwealth of the Philippine Islands shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippine Islands and the United States shall be upon the basis prescribed in section 6.

(6) The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Philippine government, its Provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government.

(8) Provision shall be made for the establishment and maintenance of an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the Legislature of the Commonwealth of the Philippine Islands shall be reported to the Congress of the United States.

(12) The Philippine Islands recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President, to call into the service of such armed forces all military forces organized by the Philippine government.

(13) The decisions of the courts of the Commonwealth of the Philippine Islands shall be subject to review by the Supreme Court of the United States as provided in paragraph (6) of section 7.

(14) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the government of the Commonwealth of the Philippine Islands and for the maintenance of the government as provided in the constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of government obligations under and in accordance with the provisions of the constitution.

(15) The authority of the United States High Commissioner to the government of the Commonwealth of the Philippine Islands, as provided in this Act, shall be recognized.

(16) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of the citizens and corporations, respectively, thereof.

(b) The constitution shall also contain the following provisions, effective as of the date of the proclamation of the President recognizing the independence of the Philippine Islands, as hereinafter provided:

(1) That the property rights of the United States and the Philippine Islands shall be promptly adjusted and settled, and that all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights of citizens of the Philippine Islands.

(2) That the officials elected and serving under the constitution adopted pursuant to the provisions of this Act shall be constitutional officers of the free and independent government of the Philippine Islands and qualified to function in all respects as if elected directly under such government, and shall serve their full terms of office as prescribed in the constitution.

(3) That the debts and liabilities of the Philippine Islands, its Provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States shall be assumed by the free and independent government of the Philippine Islands; and that where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any Province, city, or municipality therein, the Philippine government will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on the taxes collected in the Philippine Islands.

(4) That the government of the Philippine Islands, on becoming independent of the United States, will assume all continuing obligations assumed by the United States under the treaty of peace with Spain ceding said Philippine Islands to the United States.

(5) That by way of further assurance the government of the Philippine Islands will embody the foregoing provisions (except paragraph (2)) in a treaty with the United States.

SUBMISSION OF CONSTITUTION TO THE PRESIDENT OF THE UNITED STATES

SEC. 3. Upon the drafting and approval of the constitution by the constitutional convention in the Philippine Islands, the constitution shall be submitted within two years after the enactment of this Act to the President of the United States, who shall determine whether or not it conforms with the provisions of this Act. If the President finds that the proposed constitution conforms substantially with the provisions of this Act he shall so certify to the Governor General of the Philippine Islands, who shall so advise the constitutional convention. If the President finds that the constitution does not conform with the provisions of this Act he shall so advise the Governor General of the Philippine Islands, stating wherein in his judgment the constitution does not so conform and submitting provisions which will in his judgment make the constitution so conform. The Governor General shall in turn submit such message to the constitutional convention for further action by them pursuant to the same procedure hereinbefore defined, until the President and the constitutional convention are in agreement.

Submission of Constitution to Filipino People

Sec. 4. After the President of the United States has certified that the constitution conforms with the provisions of this Act, it shall be submitted to the people of the Philippine Islands for their ratification or rejection at an election to be held within four months after the date of such certification, on a date to be fixed by the Philippine Legislature, at which election the qualified voters of the Philippine Islands shall have an opportunity to vote directly for or against the proposed constitution and ordinances appended thereto. Such election shall be held in such manner as may be prescribed by the Philippine Legislature, to which the return of the election shall be made. The Philippine Legislature shall by law provide for the canvassing of the return and shall certify the result to the Governor General of the Philippine Islands, together with a statement of the votes cast, and a copy of said constitution and ordinances. If a majority of the votes cast shall be for the constitution, such vote shall be deemed an expression of the will of the people of the Philippine Islands in favor of Philippine independence, and the Governor General shall, within thirty days after receipt of the certification from the Philippine Legislature, issue a proclamation for the election of officers of the government of the Commonwealth of the Philippine Islands provided for in the constitution. The election shall take place not earlier than three months nor later than six months after the proclamation by the Governor General ordering such election. When the election of the officers provided for under the constitution has been held and the results determined, the Governor General of the Philippine Islands shall certify the results of the election to the President of the United States, who shall there-

upon issue a proclamation announcing the results of the election, and upon the issuance of such proclamation by the President the existing Philippine government shall terminate and the new government shall enter upon its rights, privileges, powers, and duties, as provided under the constitution. The present government of the Philippine Islands shall provide for the orderly transfer of the functions of government.

If a majority of the votes cast are against the constitution, the existing government of the Philippine Islands shall continue without regard to the provisions of this Act.

Transfer of Property and Rights to Philippine Commonwealth

Sec. 5. All the property and rights which may have been acquired in the Philippine Islands by the United States under the treaties mentioned in the first section of this Act, except such land or other property as has heretofore been designated by the President of the United States for Military and other reservations of the Government of the United States, and except such land or other property or rights or interests therein as may have been sold or otherwise disposed of in accordance with law, are hereby granted to the government of the Commonwealth of the Philippine Islands when constituted.

Relations with the United States Pending Complete Independence

Sec. 6. After the date of the inauguration of the government of the Commonwealth of the Philippine Islands trade relations between the United States and the Philippine Islands shall be as now provided by law, subject to the following exceptions:

(a) There shall be levied, collected, and paid on all refined sugars in excess of fifty thousand long tons, and on unrefined sugars in excess of eight hundred thousand long tons, coming into the United States from the Philippine Islands in any calendar year, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(b) There shall be levied, collected, and paid on all coconut oil coming into the United States from the Philippine Islands in any calendar year in excess of two hundred thousand long tons, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(c) There shall be levied, collected, and paid on all yarn, twine, cord, cordage, rope and cable, tarred or untarred, wholly or in chief value of manila (abaca) or other hard fibers, coming into the United States from the Philippine Islands in any calendar year in excess of a collective total of three million pounds of all such articles hereinbefore enumerated, the same rates of duty which are required by the laws of the United States to be levied, collected, and paid upon like articles imported from foreign countries.

(d) In the event that in any year the limit in the case of any article which may be exported to the United States free of duty shall be reached by the Philippine Islands, the amount or quantity of such articles produced or manufactured in the Philippine Islands thereafter that may be so exported to the United States free of duty shall be allocated, under export permits issued by the government of the Commonwealth of the Philippine Islands, to the producers or

manufacturers of such articles proportionately on the basis of their exportation to the United States in the preceding year; except that in the case of unrefined sugar the amount thereof to be exported annually to the United States free of duty shall be allocated to the sugar-producing mills of the islands proportionately on the basis of their average annual production for the calendar years 1931, 1932, and 1933, and the amount of sugar from each mill which may be so exported shall be allocated in each year between the mill and the planters on the basis of the proportion of sugar to which the mill and the planters are respectively entitled. The government of the Philippine Islands is authorized to adopt the necessary laws and regulations for putting into effect the allocation hereinbefore provided.

(e) The government of the Commonwealth of the Philippine Islands shall impose and collect an export tax on all articles that may be exported to the United States from the Philippine Islands free of duty under the provisions of existing law as modified by the foregoing provisions of this section, including the articles enumerated in subdivisions (a), (b), and (c), within the limitations therein specified, as follows:

(1) During the sixth year after the inauguration of the new government the export tax shall be 5 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(2) During the seventh year after the inauguration of the new government the export tax shall be 10 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(3) During the eighth year after the inauguration of the new government the export tax shall be 15 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(4) During the ninth year after the inauguration of the new government the export tax shall be 20 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries;

(5) After the expiration of the ninth year after the inauguration of the new government the export tax shall be 25 per centum of the rates of duty which are required by the laws of the United States to be levied, collected, and paid on like articles imported from foreign countries.

The government of the Commonwealth of the Philippine Islands shall place all funds received from such export taxes in a sinking fund, and such funds shall, in addition to other moneys available for that purpose, be applied solely to the payment of the principal and interest on the bonded indebtedness of the Philippine Islands, its Provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged.

When used in this section in a geographical sense, the term "United States" includes all Territories and possessions of the United States, except the Philippine Islands, the Virgin Islands, American Samoa, and the island of Guam.

SEC. 7. Until the final and complete withdrawal of American sovereignty over the Philippine Islands—

(1) Every duly adopted amendment to the constitution of the government of the Commonwealth of the Philippine

Islands shall be submitted to the President of the United States for approval. If the President approves the amendment or if the President fails to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such constitution.

(2) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the government of the Commonwealth of the Philippine Islands, which in his judgment will result in a failure of the government of the Commonwealth of the Philippine Islands to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippine Islands, or which in his judgment will violate international obligations of the United States.

(3) The Chief Executive of the Commonwealth of the Philippine Islands shall make an annual report to the President and Congress of the United States of the proceedings and operations of the government of the Commonwealth of the Philippine Islands and shall make such other reports as the President or Congress may request.

(4) The President shall appoint, by and with the advice and consent of the Senate, a United States High Commissioner to the government of the Commonwealth of the Philippine Islands who shall hold office at the pleasure of the President and until his successor is appointed and qualified. He shall be known as the United States High Commissioner to the Philippine Islands. He shall be the representative of the President of the United States in the Philip-

pine Islands and shall be recognized as such by the government of the Commonwealth of the Philippine Islands by the commanding officers of the military forces of the United States, and by all civil officials of the United States in the Philippine Islands. He shall have access to all records of the government or any subdivision thereof, and shall be furnished by the Chief Executive of the Commonwealth of the Philippine Islands with such information as he shall request.

If the government of the Commonwealth of the Philippine Islands fails to pay any of its bonded or other indebtedness or the interest thereon when due or to fulfill any of its contracts, the United States High Commissioner shall immediately report the facts to the President, who may thereupon direct the High Commissioner to take over the customs offices and administration of the same, administer the same, and apply such part of the revenue received therefrom as may be necessary for the payment of such overdue indebtedness or for the fulfillment of such contracts. The United States High Commissioner shall annually, and at such other times as the President may require, render an official report to the President and Congress of the United States. He shall perform such additional duties and functions as may be delegated to him from time to time by the President under the provisions of this Act.

The United States High Commissioner shall receive the same compensation as is now received by the Governor General of the Philippine Islands, and shall have such staff and assistants as the President may deem advisable and as may be appropriated for by Congress, including a financial expert, who shall receive for submission to the High Commissioner a duplicate copy of the reports of the insular auditor. Appeals from decisions of the insular auditor may

be taken to the President of the United States. The salaries and expenses of the High Commissioner and his staff and assistants shall be paid by the United States.

The first United States High Commissioner appointed under this Act shall take office upon the inauguration of the new government of the Commonwealth of the Philippine Islands.

(5) The government of the Commonwealth of the Philippine Islands shall provide for the selection of a Resident Commissioner to the United States, and shall fix his term of office. He shall be the representative of the government of the Commonwealth of the Philippine Islands and shall be entitled to official recognition as such by all departments upon presentation to the President of credentials signed by the Chief Executive of said government. He shall have a seat in the House of Representatives of the United States, with the right of debate, but without the right of voting. His salary and expenses shall be fixed and paid by the government of the Philippine Islands. Until a Resident Commissioner is selected and qualified under this section, existing law governing the appointment of Resident Commissioners from the Philippine Islands shall continue in effect.

(6) Review by the Supreme Court of the United States of cases from the Philippine Islands shall be as now provided by law; and such review shall also extend to all cases involving the constitution of the Commonwealth of the Philippine Islands.

SEC. 8. (a) Effective upon the acceptance of this Act by concurrent resolution of the Philippine Legislature or by a convention called for that purpose, as provided in section 17—

(1) For the purposes of the Immigration Act of 1917, the Immigration Act of 1924 (except section 13 (c)), this section, and all other laws of the United States relating to the immigration, exclusion, or expulsion of aliens, citizens of the Philippine Islands who are not citizens of the United States shall be considered as if they were aliens. For such purposes the Philippine Islands shall be considered as a separate country and shall have for each fiscal year a quota of fifty. This paragraph shall not apply to a person coming or seeking to come to the Territory of Hawaii who does not apply for and secure an immigration or passport visa, but such immigration shall be determined by the Department of the Interior on the basis of the needs of industries in the Territory of Hawaii.

(2) Citizens of the Philippine Islands who are not citizens of the United States shall not be admitted to the continental United States from the Territory of Hawaii (whether entering such Territory before or after the effective date of this section) unless they belong to a class declared to be nonimmigrants by section 3 of the Immigration Act of 1924 or to a class declared to be nonquota immigrants under the provisions of section 4 of such Act other than subdivision (c) thereof, or unless they were admitted to such Territory under an immigration visa. The Secretary of Labor shall by regulations provide a method for such exclusion and for the admission of such excepted classes.

(3) Any Foreign Service officer may be assigned to duty in the Philippine Islands, under a commission as a consular officer, for such period as may be necessary and under such regulations as the Secretary of State may prescribe, during which assignment such officer shall be considered as stationed in a foreign country; but his powers and duties

shall be confined to the performance of such of the official acts and notarial and other services, which such officer might properly perform in respect of the administration of the immigration laws if assigned to a foreign country as a consular officer, as may be authorized by the Secretary of State.

(4) For the purposes of sections 18 and 20 of the Immigration Act of 1917, as amended, the Philippine Islands shall be considered to be a foreign country.

(b) The provisions of this section are in addition to the provisions of the immigration laws now in force, and shall be enforced as a part of such laws, and all the penal or other provisions of such laws not inapplicable, shall apply to and be enforced in connection with the provisions of this section. An alien, although admissible under the provisions of this section, shall not be admitted to the United States if he is excluded by any provision of the immigration laws other than this section, and an alien, although admissible under the provisions of the immigration laws other than this section, shall not be admitted to the United States if he is excluded by any provision of this section.

(c) Terms defined in the Immigration Act of 1924 shall, when used in this section, have the meaning assigned to such terms in that Act.

SEC. 9. There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the Philippine Islands or of the Provincial and municipal governments thereof, hereafter issued during the continuance of United States sovereignty in the Philippine Islands: *Provided*, That such bonds and obligations hereafter issued shall not

be exempt from taxation in the United States or by authority of the United States.

RECOGNITION OF PHILIPPINE INDEPENDENCE AND WITHDRAWAL OF AMERICAN SOVEREIGNTY

SEC. 10. (a) On the 4th day of July immediately following the expiration of a period of ten years from the date of the inauguration of the new government under the constitution provided for in this Act the President of the United States shall by proclamation withdraw and surrender all right of possession, supervision, jurisdiction, control, or sovereignty then existing and exercised by the United States in and over the territory and people of the Philippine Islands, including all military and other reservations of the Government of the United States in the Philippines (except such naval reservations and fueling stations as are reserved under section 5), and, on behalf of the United States, shall recognize the independence of the Philippine Islands as a separate and self-governing nation and acknowledge the authority and control over the same of the government instituted by the people thereof, under the constitution then in force.

(b) The President of the United States is hereby authorized and empowered to enter into negotiations with the government of the Philippine Islands, not later than two years after his proclamation recognizing the independence of the Philippine Islands, for the adjustment and settlement of all questions relating to naval reservations and fueling stations of the United States in the Philippine Islands, and pending such adjustment and settlement the matter of naval reservations and fueling stations shall remain in its present status.

NEUTRALIZATION OF PHILIPPINE ISLANDS

SEC. 11. The President is requested, at the earliest practicable date, to enter into negotiations with foreign powers with a view to the conclusion of a treaty for the perpetual neutralization of the Philippine Islands, if and when Philippine independence shall have been achieved.

NOTIFICATION TO FOREIGN GOVERNMENTS

SEC. 12. Upon the proclamation and recognition of the independence of the Philippine Islands, the President shall notify the governments with which the United States is in diplomatic correspondence thereof and invite said governments to recognize the independence of the Philippine Islands.

TARIFF DUTIES AFTER INDEPENDENCE

SEC. 13. After the Philippine Islands have become a free and independent nation there shall be levied, collected, and paid upon all articles coming into the United States from the Philippine Islands the rates of duty which are required to be levied, collected, and paid upon like articles imported from other foreign countries: *Provided*, That at least one year prior to the date fixed in this Act for the independence of the Philippine Islands, there shall be held a conference of representatives of the Government of the United States and the government of the Commonwealth of the Philippine Islands, such representatives to be appointed by the President of the United States and the Chief Executive of the Commonwealth of the Philippine Islands, respectively, for the purpose of formulating recommendations as to future trade relations between the Government of the United States and the independent gov-

ernment of the Philippine Islands, the time, place, and manner of holding such conference to be determined by the President of the United States; but nothing in this proviso shall be construed to modify or affect in any way any provision of this Act relating to the procedure leading up to Philippine independence or the date upon which the Philippine Islands shall become independent.

IMMIGRATION AFTER INDEPENDENCE

SEC. 14. Upon the final and complete withdrawal of American sovereignty over the Philippine Islands the immigration laws of the United States (including all the provisions thereof relating to persons ineligible to citizenship) shall apply to persons who were born in the Philippine Islands to the same extent as in the case of other foreign countries.

CERTAIN STATUTES CONTINUED IN FORCE

SEC. 15. Except as in this Act otherwise provided, the laws now or hereafter in force in the Philippine Islands shall continue in force in the Commonwealth of the Philippine Islands until altered, amended, or repealed by the Legislature of the Commonwealth of the Philippine Islands or by the Congress of the United States, and all references in such laws to the government or officials of the Philippines or Philippine Islands shall be construed, insofar as applicable, to refer to the government and corresponding officials respectively of the Commonwealth of the Philippine Islands. The government of the Commonwealth of the Philippine Islands shall be deemed successor to the present government of the Philippine Islands and of all the rights and obligations thereof. Except as otherwise provided in this

Act, all laws or parts of laws relating to the present government of the Philippine Islands and its administration are hereby repealed as of the date of the inauguration of the government of the Commonwealth of the Philippine Islands.

SEC. 16. If any provision of this Act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the Act and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

EFFECTIVE DATE

SEC. 17. The foregoing provisions of this Act shall not take effect until accepted by concurrent resolution of the Philippine Legislature or by a convention called for the purpose of passing upon that question as may be provided by the Philippine Legislature.

Approved, March 24, 1934.

3. Constitution of the Government of the Commonwealth of the Philippine Islands.

[Adopted by the Philippine Constitutional Convention at the City of Manila, Philippine Islands, on the eighth day of February, nineteen hundred and thirty-five, and approved by the President of the United States on the twenty-third day of March, nineteen hundred and thirty-five.]

The Filipino people, imploring the aid of Divine Providence, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty, and democracy, do ordain and promulgate this Constitution.

ARTICLE I

The National Territory

Section 1. The Philippines comprises all the territory ceded to the United States by the treaty of Paris concluded between the United States and Spain on the tenth day of December, eighteen hundred and ninety-eight, the limits of which are set forth in Article III of said treaty, together with all the islands embraced in the treaty concluded at Washington, between the United States and Spain on the seventh day of November, nineteen hundred, and in the treaty concluded between the United States and Great Britain on the second day of January, nineteen hundred and thirty, and all territory over which the present Government of the Philippine Islands exercises jurisdiction.

ARTICLE II

Declaration of Principles

Section 1. The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them.

Section 2. The defense of the State is a prime duty of government, and in the fulfillment of this duty all citizens may be required by law to render personal military or civil service.

Section 3. The Philippines renounces war as an instrument of national policy, and adopts the generally accepted principles of international law as a part of the law of the Nation.

Section 4. The natural right and duty of parents in the rearing of the youth for civic efficiency should receive the aid and support of the Government.

Section 5. The promotion of social justice to insure the well-being and economic security of all the people should be the concern of the State.

ARTICLE III

Bill of Rights

Section 1. (1) No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

(2) Private property shall not be taken for public use without just compensation.

(3) The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrants shall issue but upon probable cause, to be determined by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched, and the persons or things to be seized.

(4) The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired.

(5) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court or when public safety and order require otherwise.

(6) The right to form associations or societies for purposes not contrary to law shall not be abridged.

(7) No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

(8) No law shall be passed abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and petition the Government for redress of grievances.

(9) No law granting a title of nobility shall be enacted, and no person holding any office of profit or trust shall, without the consent of the National Assembly, accept any

present, emolument, office, or title of any kind whatever from any foreign state.

(10) No law impairing the obligation of contracts shall be passed.

(11) No *ex post facto* law or bill of attainder shall be enacted.

(12) No person shall be imprisoned for debt or non-payment of a poll tax.

(13) No involuntary servitude in any form shall exist except as a punishment for crime whereof the party shall have been duly convicted.

(14) The privilege of the writ of *habeas corpus* shall not be suspended except in cases of invasion, insurrection, or rebellion, when the public safety requires it, in any of which events the same may be suspended wherever during such period the necessity for such suspension shall exist.

(15) No peron shall be held to answer for a criminal offense without due process of law.

(16) All persons shall before conviction be bailable by sufficient sureties, except those charged with capital offenses when evidence of guilt is strong. Excessive bail shall not be required.

(17) In all criminal prosecutions the accused shall be presumed to be innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses in his behalf.

(18) No person shall be compelled to be a witness against himself.

(19) Excessive fines shall not be imposed, nor cruel and unusual punishment inflicted.

(20) No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

(21) Free access to the courts shall not be denied to any person by reason of poverty.

ARTICLE IV

CITIZENSHIP

SECTION 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

SECTION 2. Philippine citizenship may be lost or reacquired in the manner provided by law.

ARTICLE V

SUFFRAGE

SECTION 1. Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election. The National Assembly shall extend the right of suffrage to women, if in a plebiscite which shall be held for that purpose within two years after the adoption of this Constitution, not less than three hundred thousand women possessing the necessary qualifications shall vote affirmatively on the question.

ARTICLE VI

LEGISLATIVE DEPARTMENT

SECTION 1. The Legislative power shall be vested in a National Assembly. The Members of the National Assembly shall not exceed one hundred and twenty, shall be chosen every three years, and shall be apportioned among the several provinces as nearly as may be according to the number of their respective inhabitants, but each province shall have at least one Member. The National Assembly shall by law make an apportionment within three years after the return of every enumeration, and not otherwise. Until

such apportionment shall have been made, the National Assembly shall consist of ninety-eight Members, of whom eighty-seven shall be elected by the representative districts as now provided by law; and three by the Mountain Province, and one by each of the other eight existing special provinces. The Members of the National Assembly in the Provinces of Sulu, Lanao, and Cotabato shall be chosen as may be determined by law; in all other provinces they shall be elected by the qualified voters therein.

SECTION 2. No person shall be a Member of the National Assembly unless he has been five years a citizen of the Philippines, is at least thirty years of age, and, at the time of his election, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election.

SECTION 3. (1) In case of vacancy in the National Assembly a special election may be called in the corresponding district, in the manner prescribed by law, but the Member thus elected shall serve only for the unexpired term.

(2) Elections for the National Assembly shall be held on the dates fixed by law.

(3) The National Assembly shall convene in regular session once every year, on the second Monday of the month immediately following that on which the election of its Members was held, unless a different date is fixed by law. The National Assembly may be called in special session at any time by the President to consider general legislation or only such subjects as he may designate. No special session shall continue longer than thirty days and

no regular session longer than one hundred days, exclusive of Sundays.

(4) The National Assembly shall choose its Speaker, a secretary, a sergeant-at-arms, and such other officers as may be required. A majority of all the Members shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and may compel the attendance of absent Members, in such manner and under such penalties as the National Assembly may provide.

(5) The National Assembly may determine the rules of its proceedings, punish its Members for disorderly behavior, and, with the concurrence of two-thirds, expel a Member. It shall keep a Journal of its proceedings, and from time to time publish the same, excepting such parts as may in its judgment require secrecy; and the *yeas* and *nays* on any question shall, at the request of one-fifth of its Members present, be entered in the Journal.

SECTION 4. There shall be an Electoral Commission composed of three Justices of the Supreme Court designated by the Chief Justice, and of six Members chosen by the National Assembly, three of whom shall be nominated by the party having the largest number of votes, and three by the party having the second largest number of votes therein. The senior Justice in the Commission shall be its Chairman. The Electoral Commission shall be the sole judge of all contests relating to the election, returns, and qualifications of the Members of the National Assembly.

SECTION 5. The Members of the National Assembly shall, unless otherwise provided by law, receive an annual compensation of five thousand pesos each including per

diems and other emoluments or allowances and exclusive only of travelling expenses to and from their respective districts when attending sessions of the National Assembly. No increase in said compensation shall take effect until after the expiration of the full term of the Members of the National Assembly elected subsequent to the approval of such increase. The Speaker of the National Assembly shall receive an annual compensation of sixteen thousand pesos until otherwise provided by law.

SECTION 6. The Members of the National Assembly shall in all cases except treason, felony, and breach of the peace, be privileged from arrest during their attendance at the sessions of the National Assembly, and in going to and returning from the same; and for any speech or debate therein, they shall not be questioned in any other place.

SECTION 7. The National Assembly shall elect from among its Members, on the basis of proportional representation of the political parties therein, a Commission on Appointments and a Commission on Impeachment, each to consist of twenty-one members. These Commissions shall be constituted within thirty days after the National Assembly shall have been organized with the election of its Speaker, and shall meet only while the National Assembly is in session, at the call of their respective Chairmen of a majority of their members, to discharge such powers and functions as are herein conferred upon them.

SECTION 8. (1) No Member of the National Assembly may hold any other office or employment in the Government without forfeiting his seat, nor shall any such Member during the time for which he was elected, be appointed to any

civil office which may have been created or the emoluments whereof shall have been increased while he was a Member of the National Assembly.

(2) No Member of the National Assembly shall directly or indirectly be financially interested in any contract with the Government or any subdivision or instrumentality thereof, or in any franchise or special privilege granted by the National Assembly during his term of office; nor shall any such Member appear as counsel before the Electoral Commission or any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or collect any fee for his appearance in any administrative proceedings or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office. No member of the Commission on Appointments of the National Assembly shall appear as counsel before any court inferior to the Supreme Court.

SECTION 9. (1) The President shall submit within fifteen days of the opening of each regular session of the National Assembly a budget of receipts and expenditures, which shall be the basis of the general appropriation bill. The National Assembly may not increase the appropriations recommended by the President for the operation of the Government as specified in the Budget, except the appropriations for the National Assembly and the Judicial Department. The form of the Budget and the information that it should contain shall be prescribed by law.

(2) No provision or enactment shall be embraced in the general appropriation, unless it relates specifically to some particular appropriation in the bill; and any such pro-

vision or enactment shall be limited in its operation to such appropriation.

SECTION 10. The heads of departments upon their own initiative or upon the request of the National Assembly may appear before and be heard by the National Assembly on any matter pertaining to their departments, unless the public interest shall require otherwise and the President shall so state in writing.

SECTION 11. (1) Every bill which shall have passed the National Assembly shall, before it becomes a law, be presented to the President. If he approves the same, he shall sign it; but if not, he shall return it with his objections to the National Assembly, which shall enter the objections at large on its Journal and proceed to reconsider it. If, after such reconsideration, two-thirds of all the Members of the National Assembly shall agree to pass the bill, it shall become a law. In all such cases the votes of the National Assembly shall be determined by *yeas* and *nays*, and the names of the Members voting for and against shall be entered on the Journal. If any bill shall not be returned by the President as herein provided within twenty days (Sundays excepted) after it shall have been presented to him, the same shall become a law in like manner as if he had signed it, unless the National Assembly by adjournment prevent its return, in which case it shall become a law unless vetoed by the President within thirty days after adjournment.

(2) The President shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not

object. When a provision of an appropriation bill affects one or more items of the same, the President cannot veto the provision without at the same time vetoing the particular item or items to which it relates. The item or items objected to shall not take effect except in the manner heretofore provided as to bills returned to the National Assembly without the approval of the President. If the veto refers to a bill or any item of an appropriation bill which appropriates a sum in excess of ten *per centum* of the total amount voted in the appropriation bill for the general expenses of the Government for the preceding year, or if it should refer to a bill authorizing an increase of the public debt, the same shall not become a law unless approved by three-fourths of all the Members of the National Assembly.

(3) The President shall have the power to veto any separate item or items in a revenue or tariff bill, and the item or items vetoed shall not take effect except in the manner provided as to bills vetoed by the President.

SECTION 12. (1) No bill which may be enacted into law shall embrace more than one subject which shall be expressed in the title of the bill.

(2) No bill shall be passed or become a law unless it shall have been printed and copies thereof in its final form furnished the Members at least three calendar days prior to its passage by the National Assembly, except when the President shall have certified to the necessity of its immediate enactment. Upon the last reading of a bill no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the *yeas* and *nays* entered on the Journal.

SECTION 13. (1) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

(2) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

(3) No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium.

SECTION 14. (1) The rule of taxation shall be uniform.

(2) The National Assembly may by law authorize the President, subject to such limitations and restrictions as it may impose, to fix within specified limits, tariff rates, import or export quotas, and tonnage and wharfage dues.

(3) Cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

SECTION 15. The National Assembly shall, with the concurrence of two-thirds of all its Members, have the sole power to declare war.

SECTION 16. In times of war or other national emergency, the National Assembly may by law authorize the President, for a limited period and subject to such restrictions as it may prescribe, to promulgate rules and regulations to carry out a declared national policy.

ARTICLE VII

EXECUTIVE DEPARTMENT

SECTION 1. The Executive power shall be vested in a President of the Philippines.

SECTION 2. The President shall hold his office during a term of six years, and together with the Vice President chosen for the same term, shall be elected by direct vote of the people. The election returns for President and Vice President, duly certified by the board of canvassers of each province, shall be transmitted to the National Assembly. Upon receipt of such returns the National Assembly shall forthwith, in public session, count the votes, and proclaim the persons elected President and Vice President. The persons respectively having the highest number of votes for President and Vice President shall be declared elected, but in case two or more shall have an equal and the highest number of votes for either office, the National Assembly shall, by a majority vote of all its Members, elect one of said persons as President or Vice President.

SECTION 3. No person may be elected to the office of President or Vice President, unless he be a natural-born citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election.

SECTION 4. No person elected President may be re-elected for the following term, nor shall the Vice President or any other person who may have succeeded to the office of President as herein provided at least one year before the election, be eligible to the office of President at such election.

SECTION 5. Elections for President and Vice President shall be held once every six years on a date to be fixed by the National Assembly.

SECTION 6. The terms of the President and Vice President shall end at noon on the thirtieth day of December following the expiration of six years after their election, and the terms of their successors shall begin from such time.

SECTION 7. If, at the time fixed for the beginning of the term of the President, the President-elect shall have died, the Vice President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President-elect shall have failed to qualify, then the Vice President shall act as President until a President shall have qualified, and the National Assembly may by law provide for the case wherein neither a President-elect nor a Vice President-elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

SECTION 8. Before he enter on the execution of his office, the President shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully and conscientiously fulfill my duties as President of the Philippines, preserve and defend its Constitution, execute its laws, do justice to every man, and consecrate myself to the service of the Nation. So help me God." (In case of affirmation, last sentence will be omitted.)

SECTION 9. In the event of the removal of the President from office or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President, and the National Assembly shall by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

SECTION 10. The President shall have an official residence and receive a compensation to be ascertained by law which shall be neither increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the Government or any of its subdivisions or instrumentalities. Until the National Assembly shall provide otherwise, the President shall receive an annual salary of thirty thousand pesos. The Vice President, when not acting as President, shall receive an annual compensation of fifteen thousand pesos until otherwise provided by law.

SECTION 11. (1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be

provided by law, and take care that the laws be faithfully executed.

(2) The President shall be commander-in-chief of all armed forces of the Philippines and, whenever it becomes necessary, he may call out such armed forces to prevent or suppress lawless violence, invasion, insurrection, or rebellion. In case of invasion, insurrection, or rebellion, or imminent danger thereof, when the public safety requires it, he may suspend the privileges of the writ of *habeas corpus*, or place the Philippines or any part thereof under martial law.

(3) The President shall nominate and with the consent of the Commission on Appointments of the National Assembly, shall appoint the heads of the executive departments and bureaus, officers of the Army from the rank of colonel, of the Navy and air forces from the rank of captain or commander, and all other officers of the Government whose appointments are not herein otherwise provided for, and those whom he may be authorized by law to appoint; but the National Assembly may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.

(4) The President shall have the power to make appointments during the recess of the National Assembly, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the National Assembly.

(5) The President shall from time to time give to the National Assembly information of the state of the Nation,

and recommend to its consideration such measures as he shall judge necessary and expedient.

(6) The President shall have the power to grant reprieves, commutations, and pardons, and remit fines and forfeitures, after conviction, for all offenses, except in cases of impeachment, upon such conditions and with such restrictions and limitations as he may deem proper to impose. He shall have the power to grant amnesty with the concurrence of the National Assembly.

(7) The President shall have the power, with the concurrence of a majority of all the Members of the National Assembly, to make treaties, and with the consent of the Commission on Appointments, he shall appoint ambassadors, other public ministers, and consuls. He shall receive ambassadors and other ministers duly accredited to the Government of the Philippines.

SECTION 12. (1) The executive departments of the present Government of the Philippine Islands shall continue as now authorized by law until the National Assembly shall provide otherwise.

(2) The heads of departments and chiefs of bureaus or offices and their assistants shall not, during their continuance in office, engage in the practice of any profession, or intervene, directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office; nor shall they, directly or indirectly, be financially interested in any contract with the Government or any subdivision or instrumentality thereof.

(3) The President may appoint the Vice President as a member of his cabinet and also as head of an executive department.

ARTICLE VIII

JUDICIAL DEPARTMENT

SECTION 1. The Judicial power shall be vested in one Supreme Court and in such inferior courts as may be established by law.

SECTION 2. The National Assembly shall have the power to define, prescribe, and apportion the jurisdiction of the various courts, but may not deprive the Supreme Court of its original jurisdiction over cases affecting ambassadors, other public ministers, and consuls, nor of its jurisdiction to review, revise, reverse, modify, or affirm on appeal, certiorari, or writ of error, as the law or the rules of court may provide, final judgments and decrees of inferior courts in—

(1) All cases in which the constitutionality or validity of any treaty, law, ordinance, or executive order or regulation is in question.

(2) All cases involving the legality of any tax, impost, assessment, or toll, or any penalty imposed in relation thereto.

(3) All cases in which the jurisdiction of any trial court is in issue.

(4) All criminal cases in which the penalty imposed is death or life imprisonment.

(5) All cases in which an error or question of law is involved.

SECTION 3. Until the National Assembly shall provide otherwise, the Supreme Court shall have such original and

appellate jurisdiction as may be possessed and exercised by the Supreme Court of the Philippine Islands at the time of the adoption of this Constitution. The original jurisdiction of the Supreme Court shall include all cases affecting ambassadors, other public ministers, and consuls.

SECTION 4. The Supreme Court shall be composed of a Chief Justice and ten Associate Justices and may sit either *in banc* or in two divisions unless otherwise provided by law.

SECTION 5. The members of the Supreme Court and all judges of inferior courts shall be appointed by the President with the consent of the Commission on Appointments of the National Assembly.

SECTION 6. No person may be appointed member of the Supreme Court unless he has been five years a citizen of the Philippines, is at least forty years of age, and has for ten years or more been a judge of a court of record or engaged in the practice of law in the Philippines.

SECTION 7. No judge appointed for a particular district shall be designated or transferred to another district without the approval of the Supreme Court. The National Assembly shall by law determine the residence of judges of inferior courts.

SECTION 8. The National Assembly shall prescribe the qualifications of judges of inferior courts, but no person may be appointed judge of any such courts unless he is a citizen of the Philippines and has been admitted to the practice of law in the Philippines.

SECTION 9. The members of the Supreme Court and all judges of inferior courts shall hold office during good behavior, until they reach the age of seventy years, or become incapacitated to discharge the duties of their office. They shall receive such compensation as may be fixed by law, which shall not be diminished during their continuance in office. Until the National Assembly shall provide otherwise, the Chief Justice of the Supreme Court shall receive an annual compensation of sixteen thousand pesos, and each Associate Justice, fifteen thousand pesos.

SECTION 10. All cases involving the constitutionality of a treaty or law shall be heard and decided by the Supreme Court *in banc*, and no treaty or law may be declared unconstitutional without the concurrence of two-thirds of all the members of the Court.

SECTION 11. The conclusions of the Supreme Court in any case submitted to it for decision shall be reached in consultation before the case is assigned to a Justice for the writing of the opinion of the Court. Any Justice dissenting from a decision shall state the reasons for his dissent.

SECTION 12. No decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based.

SECTION 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase, or modify substantive rights. The existing laws on pleading, practice, and

procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The National Assembly shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines.

ARTICLE IX

Impeachment

Section 1. The President, the Vice President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes.

Section 2. The Commission on Impeachment of the National Assembly, by a vote of two-thirds of its Members, shall have the sole power of impeachment.

Section 3. The National Assembly shall have the sole power to try all impeachments. When sitting for that purpose the Members shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence or three-fourths of all the Members who do not belong to the Commission on Impeachment.

Section 4. Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust,

or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law.

ARTICLE X

General Auditing Office

Section 1. There shall be a General Auditing Office under the direction and control of an Auditor General, who shall hold office for a term of ten years and may not be reappointed. The Auditor General shall be appointed by the President with the consent of the Commission on Appointments, and shall receive an anuual compensation to be fixed by law which shall not be diminished during his continuance in office. Until the National Assembly shall provide otherwise, the Auditor General shall receive an annual compensation of twelve thousand pesos.

Section 2. The Auditor General shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source, including trust funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the Government or the provinces or municipalities thereof. He shall keep the general accounts of the Government and preserve the vouchers pertaining thereto. It shall be the duty of the Auditor General to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant. He shall also perform such other functions as may be prescribed by law.

SECTION 3. The decisions of the Auditor General shall be rendered within the time fixed by law, and the same may be appealed to the President whose action shall be final. When the aggrieved party is a private person or entity, an appeal from the decision of the Auditor General may be taken directly to a court of record in the manner provided by law.

SECTION 4. The Auditor General shall submit to the President and the National Assembly an annual report covering the financial condition and operations of the Government, and such other reports as may be required.

ARTICLE XI

CIVIL SERVICE

SECTION 1. A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.

SECTION 2. Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote.

SECTION 3. No officer or employee of the Government shall receive additional or double compensation unless specifically authorized by law.

SECTION 4. No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law.

ARTICLE XII

CONSERVATION AND UTILIZATION OF NATURAL RESOURCES

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which case beneficial use may be the measure and the limit of the grant.

SECTION 2. No private corporation or association may acquire, lease, or hold public agricultural lands in excess of one thousand and twenty-four hectares, nor may any individual acquire such lands by purchase in excess of one hundred and forty-four hectares, or by lease in excess of one

thousand and twenty-four hectares, or by homestead in excess of twenty-four hectares. Lands adapted to grazing, not exceeding two thousand hectares, may be leased to an individual, private corporation, or association.

SECTION 3. The National Assembly may determine by law the size of private agricultural land which individuals, corporations, or associations may acquire and hold, subject to rights existing prior to the enactment of such law.

SECTION 4. The National Assembly may authorize, upon payment of just compensation, the expropriation of lands to be subdivided into small lots and conveyed at cost to individuals.

SECTION 5. Save in cases of hereditary succession, no private agricultural lands shall be transferred or assigned except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain in the Philippines.

SECTION 6. The State may, in the interest of national welfare and defense, establish and operate industries and means of transportation and communication, and, upon payment of just compensation, transfer to public ownership utilities and other private enterprises to be operated by the Government.

ARTICLE XIII

GENERAL PROVISIONS

SECTION 1. The flag of the Philippines shall be red, white, and blue, with a sun and three stars, as consecrated and honored by the people and recognized by law.

SECTION 2. All public officers and members of the armed forces shall take an oath to support and defend the Constitution.

SECTION 3. The National Assembly shall take steps toward the development and adoption of a common national language based on one of the existing native languages. Until otherwise provided by law, English and Spanish shall continue as official languages.

SECTION 4. The State shall promote scientific research and invention. Arts and letters shall be under its patronage. The exclusive right to writings and inventions shall be secured to authors and inventors for a limited period.

SECTION 5. All educational institutions shall be under the supervision of and subject to regulation by the State. The Government shall establish and maintain a complete and adequate system of public education, and shall provide at least free public primary instruction, and citizenship training to adult citizens. All schools shall aim to develop moral character, personal discipline, civic conscience, and vocational efficiency, and to teach the duties of citizenship. Optional religious instruction shall be maintained in the public schools as now authorized by law. Universities established by the State shall enjoy academic freedom. The State shall create scholarships in arts, science, and letters for specially gifted citizens.

SECTION 6. The State shall afford protection to labor, especially to working women and minors, and shall regulate the relations between landowner and tenant, and between labor and capital in industry and in agriculture. The State may provide for compulsory arbitration.

SECTION 7. The National Assembly shall not, except by general law, provide for the formation, organization, or regulation of private corporations, unless such corporations are owned or controlled by the Government or any subdivision or instrumentality thereof.

SECTION 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty *per centum* of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the National Assembly when the public interest so requires.

SECTION 9. The Government shall organize and maintain a national police force to preserve public order and enforce the law.

SECTION 10. This Constitution shall be officially promulgated in English and Spanish, but in case of conflict the English text shall prevail.

ARTICLE XIV

AMENDMENTS

SECTION 1. The National Assembly, by a vote of three-fourths of all its Members, may propose amendments to this Constitution or call a convention for that purpose. Such

amendments shall be valid as part of this Constitution when approved by a majority of the votes cast at an election at which the amendments are submitted to the people for their ratification.

ARTICLE XV

Transitory Provisions

Section 1. The first election of the officers provided in this Constitution and the inauguration of the Government of the Commonwealth of the Philippines shall take place as provided in Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four.

Section 2. All laws of the Philippine Islands shall continue in force until the inauguration of the Commonwealth of the Philippines; thereafter, such laws shall remain operative, unless inconsistent with this Constitution, until amended, altered, modified, or repealed by the National Assembly, and all references in such laws to the Government or officials of the Philippine Islands shall be construed, in so far as applicable, to refer to the Government and corresponding officials under this Constitution.

Section 3. All courts existing at the time of the adoption of this Constitution shall continue and exercise their jurisdiction, until otherwise provided by law in accordance with this Constitution, and all cases, civil and criminal, pending in said courts, shall be heard, tried, and determined under the laws then in force.

SECTION 4. All officers and employees in the existing Government of the Philippine Islands shall continue in office until the National Assembly shall provide otherwise, but all officers whose appointments are by this Constitution vested in the President shall vacate their respective offices upon the appointment and qualification of their successors, if such appointment is made within a period of one year from the date of the inauguration of the Commonwealth of the Philippines.

SECTION 5. The Members of the National Assembly for the Mountain Province shall be elected as may be provided by law. The voters of municipalities and municipal districts formerly belonging to a special province and now forming part of regular provinces shall vote in the election for Members of the National Assembly in such districts as may be provided by law.

SECTION 6. The provisions of this Constitution, except those contained in this article and in Article V, and those which refer to the election and qualifications of officers to be elected under this Constitution, shall not take effect until the inauguration of the Commonwealth of the Philippines.

ARTICLE XVI

SPECIAL PROVISIONS EFFECTIVE UPON THE PROCLAMATION OF THE INDEPENDENCE OF THE PHILIPPINES

SECTION 1. Upon the proclamation of the President of the United States recognizing the independence of the Philippines—

(1) The property rights of the United States and the Philippines shall be promptly adjusted and settled, and all existing property rights of citizens or corporations of the United States shall be acknowledged, respected, and safeguarded to the same extent as property rights or citizens of the Philippines.

(2) The officials elected and serving under this Constitution shall be constitutional officers of the free and independent government of the Philippines and qualified to function in all respects as if elected directly under such Government, and shall serve their full terms of office as prescribed in this Constitution.

(3) The debts and liabilities of the Philippines, its provinces, cities, municipalities, and instrumentalities, which shall be valid and subsisting at the time of the final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippines; and where bonds have been issued under authority of an Act of Congress of the United States by the Philippine Islands, or any province, city, or municipality therein, the Government of the Philippines will make adequate provision for the necessary funds for the payment of interest and principal, and such obligations shall be a first lien on all taxes collected.

(4) The Government of the Philippines will assume all continuing obligations of the United States under the Treaty of Peace with Spain ceding the Philippine Islands to the United States.

(5) The Government of the Philippines will embody the foregoing provisions of this article (except subsection [2]) in a treaty with the United States.

ARTICLE XVII

The Commonwealth and the Republic

Section 1. The government established by this Constitution shall be known as the Commonwealth of the Philippines. Upon the final and complete withdrawal of the sovereignty of the United States and the proclamation of Philippine independence, the Commonwealth of the Philippines shall thenceforth be known as the Republic of the Philippines.

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4. Ordinance Appended to the Constitution

Section 1. Notwithstanding the provisions of the foregoing Constitution, pending the final and complete withdrawal of the sovereignty of the United States over the Philippines—

(1) All citizens of the Philippines shall owe allegiance to the United States.

(2) Every officer of the Government of the Commonwealth of the Philippines shall, before entering upon the discharge of his duties, take and subscribe an oath of office, declaring, among other things, that he recognizes and accepts the supreme authority of and will maintain true faith and allegiance to the United States.

(3) Absolute toleration of religious sentiment shall be secured and no inhabitant or religious organization shall be molested in person or property on account of religious belief or mode of worship.

(4) Property owned by the United States, cemeteries, churches, and parsonages or convents appurtenant thereto, and all lands, buildings, and improvements used exclusively for religious, charitable, or educational purposes shall be exempt from taxation.

(5) Trade relations between the Philippines and the United States shall be upon the basis prescribed in section six of Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four.

(6) The public debt of the Philippines and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States, and no loans shall be contracted in foreign countries without the approval of the President of the United States.

(7) The debts, liabilities, and obligations of the present Government of the Philippine Islands, its provinces, municipalities, and instrumentalities, valid and subsisting at the time of the adoption of the Constitution, shall be assumed and paid by the Government of the Commonwealth of the Philippines.

(8) The Government of the Commonwealth of the Philippines shall establish and maintain an adequate system of public schools, primarily conducted in the English language.

(9) Acts affecting currency, coinage, imports, exports, and immigration shall not become law until approved by the President of the United States.

(10) Foreign affairs shall be under the direct supervision and control of the United States.

(11) All acts passed by the National Assembly of the Commonwealth of the Philippines shall be reported to the Congress of the United States.

(12) The Philippines recognizes the right of the United States to expropriate property for public uses, to maintain military and other reservations and armed forces in the Philippines, and, upon order of the President of the United States, to call into the service of such armed forces all military forces organized by the Government of the Commonwealth of the Philippines.

(13) The decisions of the courts of the Philippines shall be subject to review by the Supreme Court of the United States as now provided by law, and such review shall also extend to all cases involving the Constitution of the Philippines.

(14) Appeals from decisions of the Auditor General may be taken to the President of the United States.

(15) The United States may, by Presidential proclamation, exercise the right to intervene for the preservation of the Government of the Commonwealth of the Philippines and for the maintenance of the Government as provided in the Constitution thereof, and for the protection of life, property, and individual liberty and for the discharge of Government obligations under and in accordance with the provisions of the Constitution.

(16) The authority of the United States High Commissioner to the Government of the Commonwealth of the Philippines as provided in Public Act Numbered One hundred and twenty-seven of the Congress of the United States approved March twenty-four, nineteen hundred and thirty-four, is hereby recognized.

(17) Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippines all the civil rights of the citizens and corporations, respectively, thereof.

(18) Every duly adopted amendment to the Constitution of the Philippines shall be submitted to the President of the United States for approval. If the President approve the amendment or if the President fail to disapprove such amendment within six months from the time of its submission, the amendment shall take effect as a part of such Constitution.

(19) The President of the United States shall have authority to suspend the taking effect of or the operation of any law, contract, or executive order of the Government of the Commonwealth of the Philippines, which in his judgment will result in a failure of the Government of the Commonwealth of the Philippines to fulfill its contracts, or to meet its bonded indebtedness and interest thereon or to provide for its sinking funds, or which seems likely to impair the reserves for the protection of the currency of the Philippines, or which in his judgment will violate international obligations of the United States.

(20) The President of the Commonwealth of the Philippines shall make an annual report to the President and Congress of the United States of the proceedings and operations of the Government of the Commonwealth of the Philippines and shall make such other reports as the President or Congress may request.

SEC. 2. Pending the final and complete withdrawal of the sovereignty of the United States over the Philippines, there shall be a Resident Commissioner of the Philippines

to the United States who shall be appointed by the President of the Commonwealth of the Philippines with the consent of the Commission on Appointments. The powers and duties of the Resident Commissioner shall be as provided in section seven, paragraph five of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, together with such other duties as the National Assembly may determine. The qualifications, compensation, and expenses of the Resident Commissioner shall be fixed by law.

SEC. 3. All other provisions of Public Act Numbered One hundred and twenty-seven of the Congress of the United States, approved March twenty-four, nineteen hundred and thirty-four, applicable to the Government of the Commonwealth of the Philippines are hereby made a part of this Ordinance as if such provisions were expressly inserted herein.

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IN THE

Supreme Court of the United States

OCTOBER TERM 1936

No. 687

HASKINS BROS. & CO., a Corporation,
Petitioner,

v.

GEORGE W. O'MALLEY, individually and as Collector of Internal Revenue for the District of Nebraska,
Respondent.

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONER

FREDERICK H. WOOD,
ALFRED C. MUNGER,
WILLIAM STANLEY,
Attorneys for Petitioner.

THOMAS T. COOKE,
Of Counsel.

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No. 687

ON WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

REPLY BRIEF FOR PETITIONER

POINT I.

NEITHER DOWNES v. BIDWELL NOR PRIOR REVENUE ACTS RELIED ON BY THE GOVERMENT SUPPORT ITS CONTENTION THAT THIS IS A VALID EXERCISE OF THE TAXING POWER.

The Government in its brief both in this case and in the companion case (No. 659) leans heavily upon "a series of statutes" said to be "almost identical with the present Act". It also cites *Downes* v. *Bidwell,* 182 U. S. 244. Neither that case nor the statutes referred to lend support to the tax in dispute as one levied to pay the debts or to provide for the common defense and general welfare of the United States.

1. Downes v. Bidwell.

The only question presented in *Downes* v. *Bidwell, supra,* was whether Porto Rico was a part of the United States, so as to make the Uniformity Clause of Art. I, Sec. 8, Clause 1 of the Constitution applicable. The question presented in the instant case was neither raised, discussed, nor decided.

The case is probably cited because the taxes in dispute were import taxes collected in the United States under the Foraker Act (31 Stat. 77) on articles brought into the United States from Porto Rico, the proceeds of which were required to be "placed at the disposal of the President", to be used "for the government and benefit of Porto Rico until the government of Porto Rico, herein provided for, shall have been organized", at which time unexpended monies collected under the provisions of the Act were required to be transferred to the local treasury of Porto Rico. Prior to the Foraker Act, Porto Rico had been under military rule. That Act, approved April 20, 1900, set up a civil government for the Island.[1] The import taxes involved in *Downes* v. *Bidwell,* which were to be used for the support of the Porto Rican government, were of a purely temporary character, and were intended to provide for the government of the Island only until the new civil government had provided for the collection of its own revenues by

---

[1]**The civil government provided for by the Foraker Act was to consist of a Governor (Sec. 17, 31 Stat. 81), an Executive Council to be appointed by the President (Sec. 18 *Ibid*), and a Legislative Assembly to consist of two Houses, of which one should be the Executive Council and the other a House of Delegates to be elected by the qualified voters of the Island (Sec. 27 *Ibid*).**

local taxation, and in no event were to continue beyond March 1902.[2] The Act further provided that Congress should have the power to annul any Act of the Legislative Assembly (Sec. 31, *Ibid* 83).

At the time of the enactment of the Foraker Act, it was the duty of the United States to provide a government for Porto Rico and support it. A tax levied for the temporary support of the government of the islands, with power in the United States to control disposition of the proceeds, bears no resemblance whatsoever to the tax in dispute, all of whose proceeds are required to be paid over to the autonomous government of the Philippine Islands, whose government has been self-supporting for more than a quarter of a century, which had been given their independence at the time of the passage of the Act, and towards whose people the United States is no longer under any duty to provide a government or to support it.

Downes v. *Bidwell* is no authority for the validity of the tax in dispute.

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[2]Sec. 3 of the Act (p. 58) provides specifically as follows:

> "• • • and whenever the legislative assembly of Porto Rico shall have enacted and put into operation a system of local taxation to meet the necessities of the government of Porto Rico, by this Act established, and shall by resolution duly passed so notify the President, he shall make proclamation thereof, and thereupon all tariff duties on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico shall cease, and from and after such date all such merchandise and articles shall be entered at the several ports of entry free of duty; and in no event shall any duties be collected after the first day of March, nineteen hundred and two, on merchandise and articles going into Porto Rico from the United States or coming into the United States from Porto Rico."

2. The prior revenue acts relied on by the Government are without legal significance.

As we shall hereinafter demonstrate by considering these statutes in some detail, they are not at all identical with the present Act. The taxes laid by them were quite different in nature from ours, none being internal revenue taxes on activities within the United States. The situation and status of the Philippine Islands during the seven year period of operation of the Act of March 8, 1902, c. 140, 32 Stat. 54, Sec. 4 (U. S. C., Title 19, Sec. 123a), which was the only one levying an import tax in the United States, was entirely different from the status of the Islands under the Jones Act of 1916, which was the first organic act for this territory, and of course wholly different from the situation and status of the Islands under the Philippine Independence Act. The other statutes levied mere stamp taxes in lieu of Philippine internal revenue taxes, practically all collections being made in the Islands. Moreover, the amounts collected under these various Acts were inconsequential when compared with the total revenues raised in the Philippine Islands, whereas our tax has in the space of three years raised more than enough to pay off the entire Philippine national debt.

Before entering upon a detailed discussion of the provisions of this series of statutes, it should be noted that in any event they are of little, if any, legal significance as precedents in determining the validity *vel non* of our statute. Exercise of such supposed legislative authority by Congress is not as the Government claims any evidence of the constitutionality of the practice. The only authorities cited by the Government for its contention are *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472, 473, and *United States* v. *Curtiss-Wright Export Corp.*, No. 98 October

Term, 1936, decided December 21, 1936, 57 Supp. Ct. 216 (so-called *Chaco* case). Neither of these cases is in point. In the *Midwest Oil* case, this court merely held that when Congress, having the powers of a proprietor over the public domain, had permitted the President from an early period in the history of the Government to withdraw public lands opened for occupation so long as they remained unappropriated, it would be taken to have assented to the practice. There is no principle prohibiting Congress from delegating its proprietary powers in connection with the public domain to the President. In this respect it is like a private proprietor. Moreover, the practice in question and Congressional acquiescence extended back to the beginnings of our Government, whereas in our case the first of the statutes relied upon by the Government was passed in 1902. The same is true of the Presidential practice with respect to foreign relations which is involved in the *Chaco* case, which, moreover, stands also on an entirely independent basis.

In determining the weight, if any, to be given to practical construction by Congress of the Constitution, certain inapplicable principles should be noted and distinguished. We are not concerned with the principle that property rights acquired on the faith of a long-continued and uniform administrative or legislative construction of a statute or constitutional provision should not be lightly disturbed. Nor are we concerned with the legislative or administrative construction of ambiguous statutes or statutes of doubtful meaning, chiefly, if not entirely, so-called "administrative statutes", long acquiesced in. And, of course, there cannot be applied to our case the principle that in the construction of constitutional provisions, the practice of the first Congress or early Congresses, composed for the most part of members of the constitutional or ratifying conventions,

should be entitled to great weight. None of the foregoing principles apply, and we have not been able to discover any cases which lend authority to the proposition that any weight should be attached to the series of statutes which the Government cites as precedents for the instant statute.

3. The taxes imposed by the Acts referred to and the circumstances of their imposition are distinguishable.

The first of the "series of statutes" referred to by the Government is the Act of March 8, 1902 (32 Stat. 54). This Act, like the Foraker Act for Porto Rico, levied import duties upon goods imported into the United States from the Philippine Islands, the proceeds of which were required to be "paid into the treasury of the Philippine Islands", to be used and expended for the government and benefit of the Islands. The Act was entitled "An Act temporarily to provide revenue for the Philippine Islands, and for other purposes". At the time of its enactment the Islands were still in a state of insurrection,[3] and were being governed by the War Department through the Philippine Commission. They continued to be so governed until October 16, 1907.[4]

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[3]See recitals of Sec. 6 of "An Act temporarily to provide for the administration of the affairs of civil government in the Philippine Islands—and for other purposes" (32 Stat. 691, 693)—approved July 1, 1902.

[4]The Act of July 1, 1902 provided (Sec. 6) that "whenever the existing insurrection in the Philippine Islands shall have ceased, and a condition of general and complete peace shall have been established therein", a census should be taken, and that (Sec. 7) two years after the completion of the census the Philippine Commission, if so directed by the President, should call a general election for the choice of

The import duties imposed by the Act of March 8, 1902 continued to be collected for a little less than two years after establishment of civil government in the Islands, when they were superseded by import duties imposed by the Tariff Act of August 5, 1909. With the passage of this Act collection of import duties in the United States on Philippine products practically ceased by reason of the liberal provisions which it made for free entry of Philippine products.[5]

As in the case of the Foraker Act, the provision contained in the Act of March 8, 1902, by which the proceeds of import duties on Philippine products brought into the United States were to be used for the support of the Philippine Government, was enacted under circumstances wholly different from those surrounding the imposition of the tax in dispute. The Islands had but recently come into the pos-

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delegates to the Philippine Assembly, the latter to constitute one of two houses of a Philippine Legislature, of which the other should consist of the Philippine Commission. The first election under this law was held July 30, 1907, and the first Philippine Assembly convened on October 16, 1907 (Report of Philippine Commission, 1907, p. 6).

[5]The statement in the Government's brief in the companion case that collections under the Act of March 8, 1902 had amounted to $3,834,513 by 1930, is, standing by itself, misleading. The same table from which this figure is taken (Table 36, United States-Philippine Tariff and Trade Relations, U. S. Tariff Commission 1931, p. 121) shows that collections under this Act practically ceased in 1909, the aggregate of the import duties collected thereunder since 1909 being but $187,249, and those for the last year shown in the table (1930) $1,577. The statement in the Government's brief that the Tariff Act of 1909 provided that import duties on Philippine products should be paid to the Philippine Government is not correct. In the absence of such a provision it may be doubted whether such payments subsequent to 1909 have been authorized, but the amounts are inconsequential, as shown above.

session of the United States, whose duty it was to provide a government for them and to support that government. The insurrection had not been wholly quelled. Civil government had not been established and the Islands were being governed by the War Department through the Philippine Commission, and continued to be governed by such Commission for a period of more than five years. Such import duties continued to be collected for a little less than two years after the establishment of civil government—in which, however, the Philippine Commission constituted the upper house of the Legislature. Sec. 86 of the Act of July 1, 1902 (32 Stat. 712), by which such civil government was established, provided as follows:

> "SEC. 86. That all laws passed by the government of the Philippine Islands shall be reported to Congress, which hereby reserves the power and authority to annul the same, and the Philippine Commission is hereby directed to make annual report of all its receipts and expenditures to the Secretary of War."

The imposition of import duties to be collected within the United States for the support of the Philippine Government under such circumstances bears no resemblance whatsoever to the imposition of the tax in dispute, all the proceeds of which are to be paid over to the autonomous and self-supporting government of the Islands, which have been given their independence subject to the exercise of certain limited powers by the United States, to be used by such government as it pleases, and yielding a revenue of approximately $14,000,000 per year.

The Government also refers to certain provisions contained in the Tariff Acts of August 5, 1909, *supra*, of

October 3, 1913 (38 Stat. 114, 193), of September 21, 1923 (42 Stat. 858, 935) and of June 17, 1930 (46 Stat. 590, 686). Of these Acts, the Tariff Act of 1930 was the one in force at the time of the imposition of the tax in dispute, and its provisions are substantially identical with those of its predecessors. Sec. 301 of that Act (46 Stat. 686) provides that on articles raised or manufactured in the Philippine Islands, which shall come into the United States, a stamp tax shall be imposed equal to the internal revenue tax imposed in the United States upon like articles of domestic origin, and that such articles, shipped from the Islands to the United States, shall be exempt from the payment of any tax imposed by the internal revenue laws of the Philippine Islands. It contains a reciprocal provision subjecting articles shipped to the Islands from the United States to a tax equal to the internal revenue tax imposed in the Philippines upon like articles, and exempting such articles from the payment of internal revenue taxes within the United States. It further provides that all internal revenues collected *in* or for account of the Philippine Islands shall be paid into the insular treasury. From the beginning, practically all of these taxes have been collected within the Philippine Islands.[6]

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[6]The Government in its brief in the companion case refers to the fact that between 1910 and 1929 proceeds of internal revenue taxes on Philippine products levied under this series of the Tariff Acts amounted to $11,324,594 (United States-Philippine Tariff and Trade Relations, U. S. Tariff Comm. 1931, p. 121). The same table discloses that of this sum $11,136,016 were collected in the Philippines and but $188,578 in the United States.

The Report of the Commissioner of Internal Revenue for the fiscal year ended June 30, 1923, the last fiscal year preceding the imposition of the tax in dispute discloses (Table 7, p. 64) that in that year Internal Revenue taxes imposed

The revenues accruing to the Philippine Government under this tax were therefore revenues derived from an internal revenue tax collected in the Philippine Islands on Philippine products in lieu of internal revenue taxes, which might otherwise have been imposed within the Islands upon the same products and for the support of its government, but which the Philippine Government was prohibited from imposing. In substance, the tax was an internal revenue tax levied in the Islands on its own products for the support of its own government. Such a tax bears no resemblance to the tax in dispute. Moreover, if it did, there is clearly a marked difference between a tax yielding approximately $300,000 a year and a tax yielding approximately $14,000,000 a year, appropriated in advance to an autonomous Philippine Government, to do with as it pleases.

The same document from which the figures contained in the Government's brief were taken shows total receipts by the Philippine Government from taxes of all sorts in the year 1929 aggregating $33,857,930 (Table 34, p. 120), of which $355,000 were derived from the internal revenue tax in question, practically all of which was collected within the Philippine Islands themselves. In other words, the proceeds of this tax represented approximately 1% of the revenues of the Philippine Government from all forms of taxation. The annual revenues derived from the tax in dispute, on the other hand, represent approximately 40% of the normal receipts of the Philippine Government from all forms of taxation. Assuming, without conceding, that

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by this section on Philippine products coming into the United States amounted to $328,444.33. The same report (Table 4, p. 60) discloses that of this amount substantially all ($328,072.26) was collected in the Philippine Islands.

as long as the Philippines were to remain a possession of the United States, Congress could appropriate for the use of the Philippine Government any amount it saw fit, it would seem to be plain that a tax levied within the United States upon its citizens, yielding $14,000,000 or $15,000,000 per annum, appropriated in advance to the Philippine Government, to do with as it pleases, cannot be sustained either as a tax levied to pay the debts or to provide for the common defense and general welfare of the United States, or as one required to prevent the breakdown of orderly government in the Philippines, or to enable the Government of the new Commonwealth, properly to perform its functions. This is especially so in view of the fact that the Philippine Government is and long has been self supporting. Clearly, under the conditions created by the Independence Act, any appropriation to the Philippines must be measured with some regard to its necessities, and it is beyond the power of Congress to make a gift to the Philippines of so large a sum extracted from the citizens of the United States.

The nature of the taxes relied upon by the Government and the circumstances under which imposed clearly distinguish them from the tax in dispute. They afford no justification whatever for a contention that the tax in dispute may be sustained as one to pay the debts or to pay for the common defense or general welfare of the United States. Even assuming, therefore, that weight may be given to a legislative interpretation of constitutional provisions, the nature of these taxes, the circumstances under which they were levied, and the amount yielded, were so different from the nature of the tax in dispute, the circumstances under which it was imposed and the amount yielded thereby, as to deprive them of all value as precedent.

POINT II.

THE CONSTITUTIONAL POWER OF CONGRESS TO GOVERN AND TO MAKE RULES AND REGULATIONS FOR THE TERRITORIES OF THE UNITED STATES DOES NOT JUSTIFY THE CONTRIBUTION OF FIFTY MILLION DOLLARS EXTRACTED FROM THE PEOPLE OF THE UNITED STATES TO THE TREASURY OF THE AUTONOMOUS GOVERNMENT OF THE COMMONWEALTH OF THE PHILIPPINE ISLANDS WITHOUT EVEN DESIGNATING THE GENERAL PURPOSES FOR WHICH IT MUST BE SPENT.

We do not quarrel with the Government's contention that Congress may fulfill the constitutional requirements for an appropriation without being very precise or specific in designating the objects and purposes for which the moneys may be spent by the Executive Department of the United States Government. In two most important respects, however, the situation which confronts the Court in this case is totally different from the situations, statutes and cases cited by the Government. In the first place, the Government does not advance its case by the contention that the purposes and objects of Congressional spending may be designated with considerable generality without impairing the constitutionality of the measure. It must argue that a statute is constitutional which provides for the spending of moneys without even a general specification of the purposes and objects to guide those who are to make the expenditures. In the second place, it must argue, assuming that the Executive Department of the United States

Government could be accorded by Congress such an unlimited power, that a like delegation can be made to the autonomous Government of the Commonwealth of the Philippine Islands to spend in its untrammeled discretion. Neither of these contentions—both of which the Government is called upon to sustain in order to carry its point—can be upheld either in principle or upon the authorities the Government cites.

With respect to the necessity of the designation by Congress of at least a general purpose to guide the Executive Department in its expenditures of public moneys, the Government has, in two of its recent briefs in this Court, virtually conceded the point. In its brief (p. 101) in *United States* v. *Butler*, No. 401, October Term, 1935 (297 U. S. 1), Government counsel stated:

> "It may be that the appropriation must specify a purpose. For example, if a grant of funds were made, not specifying any purpose whatsoever, it might not be a sufficient exercise of the duty placed upon Congress by Article I, Section 9, Clause 7 of the Constitution."

In *Duke Power Co. et al.* v. *Greenwood County et al.*, No. 32, October Term, 1936, Government counsel said (at p. 136):

> "When Congress appropriates money for designated purposes, the problem is not the control of coercive power *but the establishment of standards sufficiently definite to insure that the money is applied for the purposes for which it was intended* and, at the same time, sufficiently reasonable and elastic to permit the executive to apply the money efficiently to those purposes." (Emphasis ours.)

This agrees with Alexander Hamilton's opinion (set forth at page 51 of our main brief) as follows:

> "to secure these important ends,—that the *purpose*, the *limit*, and the fund of every expenditure *should be ascertained by a previous law.*" (Italics ours.) [Hamilton's Works (Ham. Ed.), VII, pp. 532, 533.]

It is to be noted that our statute does not even devote the proceeds of this exaction to the proper governmental purposes of the Government of the Commonwealth of the Philippine Islands. As has been commented upon in our main brief, the purpose of Congress was to take the money away from the United States Treasury and to give it to the Philippine Government without restriction as to purpose, since Congress was satisfied that it be spent for any purpose at all except for the one purpose of subsidizing producers of cocoanut oil in the Philippines.

As to the second point which the Government must sustain in order to justify this delegation of Congressional spending power, its reliance is upon the cases of *United States* v. *Heinszen & Co.*, 206 U. S. 370, and *Dorr* v. *United States*, 195 U. S. 133. The argument is that these cases establish the power of Congress to legislate for the territories of the United States, either by laws of its own or by designating instrumentalities or agencies to govern in its place and stead. In this way the Government seeks to justify Congressional failure to comply with even the minimum standards for the appropriation of public moneys.

But the cases cited do not justify the stand taken by the Government in this case. The *Dorr* case held no more than that Congress had the right to authorize for the Philippine

Islands a temporary government of the character of the Philippine Commission and to delegate to that government the power to pass laws for the government of the Philippine Islands, the point in the particular case being the validity of a libel law passed by the Philippine Commission. (*Dorr* v. *United States,* 195 U. S. 133, at p. 153.) The case did not hold that Congress could delegate to an autonomous Philippine Government the power to make laws for the disposition of public moneys raised from taxpayers in the United States, upon which disposition Congress had put no limits whatsoever.

A still narrower point was involved in the *Heinszen* case. Subsequent to the ratification of the treaty of peace with Spain but prior to March 8, 1902 when Congress had enacted tariff laws for the Philippine Islands, import and export duties had been levied upon imports into and exports from the Philippine Islands, pursuant to executive orders of the President of the United States. In 1906 Congress had ratified the action of the President in levying these duties. The Court held that, since Congress in the first instance could have authorized the President to levy these duties, it had the power to ratify them. Here again the delegation sustained was to a properly selected instrumentality, the President of the United States. In the *Dorr* case it had been to the Philippine Commission. In our case it is to the autonomous Government of the Commonwealth of the Philippine Islands. In both of these cases the issue concerned a governmental regulation in the Philippine Islands,—in the one case a local libel law, and, in the other case, import and export taxes upon imports into the Philippine Islands and exports out of the Philippine Islands. In our case the question at issue is the constitutional propriety

of permitting an autonomus Government to dispose in any way it sees fit of the public funds of the United States amounting to $14,000,000 a year, raised from the United States taxpayers and turned over to the Philippine Government without any designation by Congress as to the purposes and objects for which it may be spent.

Respectfully submitted,

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No. 687

In the Supreme Court of the United States

OCTOBER TERM, 1936

HASKINS BROS. & CO., A CORPORATION, PETITIONER

v.

GEORGE W. O'MALLEY, INDIVIDUALLY, AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 687

HASKINS BROS. & CO., A CORPORATION, PETITIONER

v.

GEORGE W. O'MALLEY, INDIVIDUALLY, AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

We do not oppose the granting of a writ of certiorari in this case.

The sole question presented is the constitutionality of the taxes on the processing of Philippine coconut oil levied by Section 602½ of the Revenue Act of 1934. The District Court, holding the taxes to be constitutional, sustained a demurrer to the petition which sought recovery of taxes paid under that Act.

While we believe the District Court's decision is entirely correct, we feel that the public interest will be promoted by an early determination by this

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Court of the constitutionality of these taxes. Section 602½ of the Revenue Act of 1934 provides that all taxes collected under that section with respect to Philippine coconut oil shall be held as a separate fund and paid to the Treasury of the Philippine Islands. Because of this provision, an early final determination of the constitutionality of this statute is of vital importance to the people of the Philippine Islands and is important to the proper discharge by the United States of the authority, duties, and obligations retained by it under the Act of March 24, 1934, c. 84, 48 Stat. 456, U. S. C., Title 48, Secs. 1231–1247, which provides for the ultimate independence of the Philippine Islands.

It should be noted that the constitutionality of this tax is also at issue in the case of *Cincinnati Soap Co.* v. *United States*, No. 659, which is pending before this Court on petition for a writ of certiorari.

Respectfully submitted.

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FEBRUARY 1937.

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Act of March 8, 1902, c. 140, 32 Stat. 54	5
Act of Aug. 5, 1909, c. 6, 36 Stat. 11, 84–85	5
Act of Oct. 3, 1913, c. 16, 38 Stat. 114, 193	5
Act of Sept. 21, 1922, c. 356, 42 Stat. 858, 935	5
Act of June 17, 1930, c. 497, 46 Stat. 590, 686	5
Miscellaneous:	
Constitution:	
Art. I, Sec. 9, cl. 7	4
Art. IV, Sec. 3	7
Tenth Amendment	7
Federalist, The, No. 72 (Hamilton) p. 450	4
H. Doc. No. 854, 62d Cong., 2d Sess., p. 72	4
May, *Constitutional History* (1912 ed.) Vol. I, pp. 158–159	5
Story, *Constitution of the United States*, Sec. 1348	4

In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 687

HASKINS BROS. & CO., PETITIONER

v.

GEORGE W. O'MALLEY, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF NEBRASKA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE RESPONDENT

OPINION BELOW

The District Court wrote no opinion. Its order sustaining the demurrer to petitioner's petition appears in the record at pp. 25–26.

JURISDICTION

The order of the District Court was entered on December 16, 1936 (R. 25). An appeal was prayed for in the Circuit Court of Appeals for the Eighth Circuit on December 24, 1936 (R. 26–27), and was allowed on the same day (R. 29–30). A petition for a writ of certiorari was filed in this Court prior

to hearing or submission of the appeal in the Circuit Court of Appeals, and was granted on February 15, 1937 (R. 32). Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether Section 602½ (a) of the Revenue Act of 1934, imposing a tax of three cents per pound upon the processing of Philippine coconut oil, is a valid exercise of the taxing power of Congress.

STATUTES AND OTHER MATERIAL INVOLVED

Section 602½ of the Revenue Act of 1934 (c. 277, 48 Stat. 680), and relevant sections of the Constitution of the Philippine Islands are set forth in the Appendix to the Brief for the United States in No. 659, *Cincinnati Soap Co. v. United States.*

STATEMENT

On November 12, 1936, Haskins Bros. & Co., petitioner herein, filed a petition at law in the United States District Court for the District of Nebraska (R. 1), praying recovery against respondent in the sum of $26,843.02. On December 9, 1936, respondent filed a demurrer to the petition (R. 25). The allegations of the petition, as admitted by the demurrer, may be summarized as follows:

Haskins Bros. & Co. is a corporation organized under the laws of Iowa, with its principal office and place of business in Omaha, Nebraska (R. 1).

It is now, and has been for many years, engaged in the making of soap and allied products (R. 3).

During the months of June, July, August, September, and October 1935, petitioner used in the manufacture of its soap 894,767⅓ pounds of coconut oil wholly the product of the Philippine Islands. Pursuant to Section 602½ of the Revenue Act of 1934, petitioner filed returns and paid to respondent collector a tax of three cents per pound upon the processing of this oil. The total amount of the tax was $26,843.02 (R. 2).

On January 13, 1936, petitioner filed with the Bureau of Internal Revenue a claim for the refund of the tax, upon the ground that it was unconstitutional (R. 2, 17–21). The claim was denied on February 5, 1936 (R. 3).[1] This suit for refund was filed on November 12, 1936 (R. 1).

The demurrer was sustained by the District Court on December 12, 1936 (R. 25, 26). Petition for an appeal was filed and allowed on December 24, 1936 (R. 26, 29). Before argument or submission of the case in the Circuit Court of Appeals the present writ of certiorari was filed, and was allowed on February 15, 1937 (R. 32).

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[1] The petition contains further allegations with respect to the use of coconut oil in soap manufacturing and otherwise (R. 3–5), the methods by which it is purchased (R. 3–4) and the details of the history of the Philippine Independence Act and the proceedings under it (R. 5–6, as well as many legal conclusions as to the invalidity of the tax (R. 6–13). To the extent that these further allegations are material they are referred to in the argument, *infra*.

ARGUMENT

The contentions of petitioner in this case are substantially the same as those advanced by petitioner in *Cincinnati Soap Co.* v. *United States,* No. 659, which is to be argued with this case. For that reason, we respectfully refer the Court to the brief filed on behalf of the respondent in that case for the full argument in support of the validity of Section 602½.

There are, however, two further points raised by petitioner in the present case which may be noted.

1. Petitioner alleges (Point IV) that the provision for payment to the Philippine Islands of the proceeds of the present tax constitutes an unconstitutional delegation of legislative power. The contention is without merit.

The Constitution does not require that Congress specify the details of the expenditure of public money. Article I, Section 9, clause 7 of the Constitution does not affect of power of *appropriation;* it is rather a restriction upon the power of expenditure. *Collins* v. *United States,* 15 Ct. Cls. 22, 35. Congress, in other words, has the power to determine the amount of the expenditure and the purpose for which the money is to be spent, but is at complete liberty to specify as few or as many details with regard to the disbursement of the money as it wishes. See Story, *Constitution of the United States,* Sec. 1348; *The Federalist,* No. 72 (Hamilton), p. 450, H. Doc. No. 854, 62d Cong.,

2d Sess., p. 72. See also *United States* v. *Hansen*, 167 Fed. 881, 884–885 (C. C. A. 9th); *People* v. *Tremaine*, 252 N. Y. 27; *State ex rel. Board of Regents* v. *Zimmerman*, 183 Wis. 132; *Moers* v. *City of Reading*, 21 Pa. 188, 202; *Holmes* v. *Olcott*, 96 Ore. 33. This power to appropriate without detailing the manner of expenditure is borne out not only by the practice in England at the time of the adoption of the Constitution (See e. g., May, *Constitutional History* (1912 ed.) Vol. I, pp. 158–159; Civil List Act of 1782, 22 Geo. III, c. 82; 27 Geo. III, c. 33), but also by the consistent exercise of such a power by Congress under the Constitution. See, *e. g.*, Act of August 7, 1789, c. 9, 1 Stat. 53; Act of September 29, 1789, c. 23, 1 Stat. 95; Act of March 26, 1790, c. 4, 1 Stat. 104; Act of March 3, 1839, c. 89, 5 Stat. 355; Act of July 31, 1861, c. 28, 12 Stat. 283; Deficiency Act of March 9, 1898, c. 56, 30 Stat. 273. Indeed, there are a series of statutes which are almost identical with the present Act, under which duties and internal revenue collections have been paid into the Philippine Treasury. Act of March 8, 1902, c. 140, 32 Stat. 54; Act of August 5, 1909, c. 6, 36 Stat. 11, 84–85; Act of October 3, 1913, c. 16, 38 Stat. 114, 193; Act of September 21, 1922, c. 356, 42 Stat. 858, 935; Act of June 17, 1930, c. 497, 46 Stat. 590, 686. Cf. Act of April 12, 1900, c. 191, 3 Stat. 77. The considered exercise by Congress of this power to appropriate money without detailing the character of the expenditure is, we submit, very persuasive evi-

dence of the existence of the power. *Field* v. *Clark*, 143 U. S. 649, 691; *United States* v. *Midwest Oil Co.*, 236 U. S. 459, 472, 473; *United States* v. *Curtiss-Wright Export Corp.*, No. 98, decided December 21, 1936.[2]

Moreover, the principle is peculiarly applicable in the present case. Like the situation which was before this Court in *United States* v. *Curtiss-Wright Export Corp., supra*, the appropriation is within the category of affairs "external to the United States." The United States is acting, with regard to the Philippines, "as a member of the family of nations, [with] right and power * * * equal to the right and power of other members of the international family." When Congress is acting in that capacity the Court "will hesitate long before limiting or embarrassing such powers". *Mackenzie* v. *Hare*, 239 U. S. 299, 311. As this Court said in *United States* v. *Heinszen & Co.*, 206 U. S. 370, 385:

> But the premise upon which this proposition rests presupposes that Congress in dealing with the Philippine Islands may not, growing out of the relation of those islands to the United States, delegate legislative au-

[2] The application of the doctrine of delegation of power to the expenditure of money is extensively treated in the brief for the United States in *United States* v. *Butler*, No. 401, October Term, 1935, 297 U. S. 1, at pp. 86–104, and in brief for the respondent administrator in *Duke Power Co.* v. *Greenwood County*, No. 32, Present Term, at pp. 136–160, to which the Court is respectfully referred.

> thority to such agencies as it may select, a proposition which is not now open for discussion. *Dorr* v. *United States,* 195 U. S. 133 [138].

Moreover, it should be noted that if the payment be considered as the discharge of a moral obligation to the Philippine Islands (See Brief for United States in No. 659, Point III, A, 1), no possible question of delegation can arise.

2. Petitioner also argues that the tax is invalid because the proceeds are appropriated to regulate agriculture within the Philippines in such a fashion as to constitute a regulation of agriculture within the United States. Assuming, as we believe contrary to fact, that the appropriation and the tax are so inseparable that the tax will fall if the provisions for payment be held bad (see brief for the United States in No. 659, Point III, B), nevertheless we submit that the argument is without weight.

There can be no question that Congress has plenary power over the Philippine Islands under Article IV, Sec. 3, of the Constitution, which confers a plenary grant of power over the territories. Insofar as the spending of the proceeds of this tax, therefore, regulates agriculture in the Philippines it is clearly valid. The Tenth Amendment has no application, since the power over the territories of the United States has been "expressly delegated" to Congress.

Nor can it be material that this regulation in the Philippines has an incidental effect upon agricul-

ture in the United States. The effect, if there be any, is merely an economic consequence of a regulation in the Philippines which is unquestionably valid. *United States* v. *Butler*, 297 U. S. 1, upon which petitioner relies, is wholly different. In that case Congress attempted a *direct regulation* of agriculture in the United States by the expenditure of Federal funds. There the effect was direct and immediate; here it is remote. Indeed, the Court in that case expressly distinguished the case of grants of Federal funds which were not conditioned upon the signing of contracts with relation to agricultural production. We submit that the case can have no application to the merely indirect effects of the exercise of a specifically granted power.

CONCLUSION

Wherefore it is respectfully submitted that the decision below should be affirmed.

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